FILE COPY

In the Supreme Court

OF THE

United States

OCTOBER TERM, 1950

No.

In the Matter of the Estate of
JANET M. PECK,
Deceased.

AARON M. SARGENT, CORNELIA M. SARGENT, MADELAN GEORGIAN, Guardian ad Litem of Helen M. Sargent, Jr., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,

Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,

Respondent.

PETITION FOR WRITS OF CERTIORARI to the California Supreme Court, District Court of Appeal, First Appellate District; and Superior Court, in and for the City and County of San Francisco.

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to the California Supreme Court, District Court of Appeal, First Appellate District; and Superior Court, in and for the City and County of San Francisco.

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners invoke the jurisdiction of this Court and apply for Writs of Certiorari in the "*Estate of Janet M. Peck, Deceased*" to the following Courts of the State of California:

Supreme Court in S.F. No 19008; District Court of Appeal, First Appellate District, Division Two, in 1 Civ. No 18130; and the Superior Court of San Francisco County, Department 9, Probate, in No 138,968.

The record consists of a binder containing the Clerk's and Reporter's transcripts of proceedings in the Superior Court and the briefs and all other proceedings in the appellate courts. Since the record is not printed, the items in the binder are numbered consecutively and identified in the Table of Contents. These item numbers, with appropriate page and line references, will be used herein.

Unless otherwise stated, all italics and other emphasis in this Petition is ours.

LOWER COURT OPINIONS

The opinion of the District Court of Appeal, reported at 168 Adv. Cal. App. 28, 335 P. 2d 185, is set forth in the Appendix. No opinions were filed by the Superior Court or the State Supreme Court.

JURISDICTIONAL STATEMENT.

Jurisdiction is invoked pursuant to 28 USCA 1257, sub. 3. The State courts have deprived Petitioners of their right to an appellate review in accordance with minimum constitutional standards. Due process and equal protection have been denied. The legal issues raised are of the highest importance to the Federal and State Judiciary, the Bar, and general public. They concern Federal questions of substance, some of which have not been determined by this Court; others are probably not in accord with applicable decisions. The time for certiorari was extended by filing petitions for rehearing, the time table in that respect being the following:

District Court of Appeal: Opinion filed Feb. 16, 1959; Rehearing Petition, March 2, 1959; denied March 18, 1959;

Supreme Court: Petition filed March 27, 1959, denied April 15, 1959.

Under 28 USCA 2101 (c) a certiorari petition may be filed on or before July 14, 1959.

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[1]Rules on Appeal fixing time are the following: Rule 27(b) allows 15 days after decision, for rehearing petition in District Court of Appeal. Time expired March 3d. Petition filed March 2d. Under Rule 24(a), decision of District Court of Appeal became final, as to that court, 30 days after opinion, viz: On March 18, 1959. Rule 28(b) allows 10 days thereafter for filing petition in Supreme Court. That time expired March 28, 1959. Petition filed March 27th. Rule 28(a) allows Supreme Court to order transfer and further hearing within 30 days after decision of District Court of Appeal becomes final as to that court. That time expired April 18th. Supreme Court order denying hearing was entered April 15, 1959. Certiorari time began to run from that date. The remittitur issued subsequently. Power in the Supreme Court to grant a hearing after decision by a District Court of Appeal is conferred by Art. VI, Sec. 4c, of the State Constitution. It is settled that these proceedings tolled the time under 28 USCA,

QUESTIONS PRESENTED FOR REVIEW.

First: The deliberately false interpretation of a document as a denial of due process and equal protection.

Is it a violation of the Fourteenth Amendment for a court to falsify the record by a deliberately untruthful interpretation of a document?

Second: A fraudulent opinion as a discrimination technique.

Is it a denial of due process and equal protection for a court to enter a judgment based on a fraudulent opinion containing (a) direct falsehoods, (b) half-truths, and (c) deliberate suppression of material facts in disregard of the record?

Should the rules enunciated in *Chessman v. Teets*, 350 U.S. 3, and *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115, be applied to this set of facts?

Third: Use of an unlawful "presumption" to advance the cause of one litigant to the detriment of another.

Does the Fourteenth Amendment prohibit courts from having any fixed policy favoring one litigant or class in hostility or antagonism to the rights of other persons or groups?

Where, by statute, the scope of a presumption against intestacy or in favor of alleged "charity" is limited to cases where the terms of a will have two or more possible interpretations—is it a denial of due process and equal

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Sec. 2101, sub. (c). See *Department of Banking v. Pink*, 317 U.S. 264; *Bowman v. Loperena*, 311 U.S. 262; *Wayne United Gas Co. v. Owens' Illinois Glass Co.*, 300 U.S. 131; *United States v. Seminole Nation*, 299 U.S. 417.

protection to apply such a presumption in a case where (a) the words used have no dual meaning, and (b) the statutory basis for the presumption does not exist?

Was it a violation of the Amendment for the State courts to refuse to apply the minimum constitutional standards set forth in *Estate of Kline*, 138 Cal. App. 514, 519-520?[2]

Fourth: Exercise of legislative power by a judicial body.

Is it a denial of due process and equal protection within the meaning of the Fourteenth Amendment for a court to exercise legislative power?

Does it constitute the exercise of such a power for a court to enter a judgment which, to be valid, would require repeal or amendment of existing statutes or constitutional provisions?

Is the retroactive exercise of such legislative power a violation of the due process and equal protection clauses of the Amendment?

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[2] *Estate of Kline*, supra: "Respondent makes the suggestion that, since legacies and devises for charitable purposes 'are the favorites of the courts, . . . the language should be liberally construed so as to create a valid trust if possible.' . . .

"On reflection, it should be apparent that the courts can have no fixed policy which will admit of the operation of a principle by which one party to litigation will be favored to the detriment of the other party therein. Manifestly, even handed justice cannot be administered on the basis of partisanship, expressed or indicated, either in favor of, or in antagonism against, either of the parties to the litigation. Nor may the subject matter in controversy in any manner affect the scales of justice. The business of the courts is to administer justice as nearly as may be in accordance with fixed rules of law and procedure . . . Any intentional departure from such a course, no matter how worthy the objective, must result in reproach to the surest foundational support of our government."

Fifth: Minimum standards of due process and equal protection required by the Fifth and Fourteenth Amendments in an appellate court.

What are the minimum constitutional standards required in appellate court proceedings, as to (a) limiting jurisdiction to matters of record, (b) protecting the right of litigants to a decision in conformity therewith, (c) observing established rules of law, (d) fair and unbiased appellate review, (e) a truthful opinion, and (f) entry of a judgment on appeal in accordance with an opinion so prepared?

Do the minimum standards of due process and equal protection which have been enforced in proceedings of administrative and legislative Boards, Commissions, and Committees, apply with equal force and effect to the proceedings of appellate courts?

Sixth: Equal application of Bill of Rights Sections to Property Rights and Personal Rights.

Petitioners have been deprived of their property, viz: Their rights of inheritance in a decedent's estate—by state court action amounting to a denial of due process and equal protection. Do these Property Rights have equal rank and status with the Personal Rights of other litigants who have successfully invoked the Fourteenth Amendment? Are these Property Rights entitled to the same protection? Should the rules in *Ullmann v. United States*, 350 U.S. 422, 428; and *Board of Education v. Barnette*, 319 U.S. 624, 648, be applied to this set of facts?

Seventh: Relief on certiorari, as a matter of right, where adequate review is denied in the lower appellate court.

Where a lower appellate court has failed to protect the right of a litigant to due process and equal protection in the proceedings conducted before it, and has not given the kind of review required to satisfy minimum constitutional standards, is a petitioner aggrieved by such conduct entitled to appropriate relief on certiorari, as a matter of right?

Does the judicial oath provision in Article VI of the United States Constitution require the Justices of this Court to issue the writ and grant relief where the proceedings in the lower appellate court do not comply with these constitutional standards?

Was it the intent of Congress in enacting 28 USCA 1257, sub. 3, to limit the discretionary power of selection conferred on this Court to those cases where there has in fact been a fair and adequate appellate review in some lower court?

The questions presented for review all arise in a civil action challenging the validity of a perpetual trust for a mixture of charitable and non-charitable objects. Under the law of the State, such trusts are void in their entirety and the assets involved must be distributed on the ground of an intestacy. Petitioners claim the residue on that theory.

The State court (a) adopted a false interpretation of the will in disregard of statutory rules of construction, (b) it misquoted and thereby falsified the record, (c) it delivered a fraudulent opinion based on such falsification,

and (d) it exercised the legislative power to "validate" this invalid trust by exempting it from the operation of constitutional and statutory provisions in force at date of death. Aside from the public importance of the issues, the right to relief on certiorari arises from the fact that there has never been an adequate review on appeal in any court.

CONSTITUTIONAL AND STATUTORY PROVISIONS.

United States Constitution:

Amendment XIV, Section 1. "No State shall . . . deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws."

Article III, Section 1. "The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish."

Article III, Section 2. "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, : . ."

Article VI. ". . . and all executive and judicial Officers, both of the United States and of the several States, shall be bound by Oath or Affirmation, to support this Constitution . . ."

28 USCA Section 1257:

"Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows: . . .

"(3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, . . ."

California Constitution, Article XX, Section 9:

"No perpetuities shall be allowed except for eleemosynary purposes."

California Civil Code, Section 22.2:

"The common law of England, so far as it is not repugnant to or inconsistent with the Constitution of the United States, or the Constitution or laws of this State, *is the rule of decision in all the courts of this State.*"

California Probate Code:

Section 50. "Every will, other than a nuncupative will, must be *in writing* . . ."

Section 100. "The interpretation of wills, wherever made, is governed, when relating to property within this state, by the law of this state, *and the rules prescribed by this code are to be observed*, unless an intention to the contrary clearly appears."

Section 102. "The words of a will are to receive an interpretation which will *give to every expression some effect*, rather than one which will render any of the expressions inoperative; and *of two modes of interpreting* a will, that is to be preferred which will prevent a total intestacy."

Section 106. "The words of a will are to be taken in their *ordinary and grammatical sense*, unless a clear intention to use them in another sense can be collected, and that other can be ascertained. *Technical words* . . . in a will are to be taken in their *technical sense*, unless the context clearly indicates a contrary intention . . ."

The statutory adoption of the common law has been held to include equitable principles.[2a] One of the principles so adopted is the rule in *Morice v. The Bishop of Durham*, 9 Vesey Jr., 399, that a perpetual trust containing *discretionary noncharitable powers*, is void in its entirety. The rule there expressed is the following:

> "Where a bequest is made for charitable purposes, and also for purposes of an indefinite character, which are not charitable, the whole bequest will be void. . . . The question is, not whether he (the trustee) *may* not apply it upon purposes strictly charitable, *but whether he is bound so to apply it?*"

This rule is part of the California law of charitable trusts. See *Estate of Hinckley*, 58 Cal. 457, 508-9 and cases in footnote.[3] It has the force and effect of a statute because of the circumstances surrounding its adoption.

Originally, California was not a common law jurisdiction. It did not operate under that system under five months after the first State Constitution of November

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[2a] *Martin v. Superior Court*, 176 Cal. 289, 292-3, 168 P. 135.

[3] *Estate of Sutro*, 155 Cal. 727, 102 P. 920; *Estate of Vance*, 118 Cal. App. 463, 4 P. 2d 977; *Estate of Huebner*, 127 Cal. App. 244, 15 P. 2d 758; *Estate of Kline*, 138 Cal. App. 514, 32 P. 2d 677; and *Estate of Peabody*, 21 Cal. App. 2d 690, 70 P. 2d 249. *Collier v. Lindley*, 203 Cal. 641, 266 P. 526, presents an apparent conflict on the facts because a trust was sustained that was "in the main" educational. The constitutional point was not raised or discussed. There was no reference to the rule in the *Bishop of Durham* case or to the statute adopting the Common Law. This was a friendly suit brought by parties united by their interest to uphold the trust. Because of the collusive nature of the proceeding, the decision has no binding force as a precedent. For a detailed discussion on this point, see Appellants' Reply Brief (Rec. Item 5), pp. 71-79. The latest expression of opinion by the California Supreme Court, is *Davenport v. Davenport*, 36 Cal. 2d 67, 222 P. 2d 11, holding that trusts for a mixture of charitable and non-charitable objects are void.

13, 1849, became effective. Mexican and Spanish law were previously in force. The new system of common law and equity was not *inherited* from Mexico—the former sovereign—it was *transplanted* by special Act of the Legislature. Being so enacted, these are *legislative* and not judicial principles. There is no judicial power of modification, amendment or repeal. No court is authorized to exempt a particular case from their operation.[4] There is no judicial power to amend the Constitution or repeal a statute.

STATEMENT OF THE CASE.

A proper decision here depends on (1) a truthful interpretation of decedent's will, and (2) giving effect to the evidence concerning the non-charitable powers and activities of Respondent—the Trustees of Stanford University.

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[4]By the Treaty of Guadalupe Hidalgo (Vol. I, Calif. Stats., pp. 14-22, Art. V), a new international boundary was established and territory including California ceded to the United States. Calif. Const. of 1849, Art. XII, Sec. 1, provided that all laws in force at the time of its adoption and not inconsistent therewith should continue "until altered or repealed *by the Legislature*." Between Nov. 13, 1849, and Apr. 13, 1850, the State operated under the legal system of Mexico; see *Fowler v. Smith*, 2 Cal. 568, and *McNeil v. First Congregational Society*, 66 Cal. 105, 4 P. 1096. On Apr. 13, 1850, the Common Law of England was made the rule of decision (Vol. I, Calif. Stats., Chapt. 95, p. 219). On the same date, the Mexican law respecting intestate distribution of property was superseded by a new statutory basis for descent and distribution of a decedent's estate (Vol. I, Calif. Stats., Chapt. 96, pp. 219-221). On Apr. 22, 1850, there was a general enactment repealing all laws in force other than those passed or adopted by the Legislature (Vol. I, Calif. Stats., Chapt. 125, p. 342). The net result is that California operated under the Mexican system for about five months and there was an outright repeal of that system by statute, accompanied by *legislative adoption* of a new system—the Common Law—which had not previously existed in the State.

The relevant parts of the will are: the preamble in paragraph SECOND, the bequest in trust, and the implementing clause requiring the establishment of a Foundation (Will, 3:25-5:5).[5] These provisions are here quoted in full with the insertion of appropriate headings indicating the nature of the subject matter. They are the following:

Statement respecting the cause of war:

> "The ever-recurring misunderstandings between the various nations and peoples of different races which impede human progress and lead to devastating wars, are *obviously attributable*, in *large measure*, to differences of *environment* and *language*."

Belief in *opinion molding* as a means of prevention:

> "I believe that these *handicaps* can be largely *overcome*, if the men and women whose vocation vests in them the *power to mold public opinion*, make a *conscious effort to that end*."

Special knowledge required:

> "However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds."

That public opinion is based mainly on what appears in the newspapers:

> "The *molding of public opinion* in the United States, insofar as concerns the attitude of our citizens to-

[5]Since the record is not printed, typewritten copies of the will are being delivered to the Clerk for the convenience of the Court. That document is cited with appropriate page and line references.

ward anything foreign, rests *almost entirely* with the press. . ."

Ignorance of editors and foreign correspondents:

". . . the press . . . must depend upon editorial staffs and foreign correspondents. Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part . . ."

Bequest in trust to correct conditions:

"I have therefore long cherished the hope that I might be able to do *something* to help toward the correction of these *conditions*, and to that end I hereby give and bequeath . . . all of my estate and property, . . . *in trust* for the *foregoing purposes*,—subject to the express terms and conditions hereinafter set forth:"

Establishment of a Foundation:

"(a) My said Trustees shall establish a *Foundation of World Relations* for the aforesaid purposes;" (Italics in original).

Perpetual maintenance with a Trust Fund:

"and my said Trustee shall use and apply the net income derived from said trust estate for the maintenance of said Foundation."

There is no provision indicating *how* the Foundation is to be established, or defining the scope of its activities once it is set up. Its charter purposes *must* include every-

thing set forth in the preamble.[6] Its charter *powers* are created by implication. Consequently, the rule in Vol. I of the *Restatement of the Law of Trusts*, Sec. 186, p. 485, must apply:

> ". . . the trustee can properly exercise such powers and only such powers as (a) are conferred upon him in express words by the terms of the trust, or (b) are *necessary* or *appropriate* to carry out the *purposes of the trust* and are *not forbidden by the terms of the trust.*"

The Foundation is not required to use educational means either in whole or in part, or to limit its activities to those which the law deems charitable. Its directors may do anything *necessary* or *appropriate* to correct or attempt to correct any condition mentioned in the preamble. Furthermore the Foundation is an entity separate and distinct from the Trust Fund created to maintain it.

This rule respecting implied trust powers is well recognized and universally applied.[7] Due process and equal

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[6] "My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;*" (Will, 5:2-3.)

". . . I hereby give and bequeath . . . all of my estate . . . in trust for the *foregoing purposes*, . . ." (Will, 4:22-26).

The reference in both instances is to the purposes referred to in the preamble, there being a trust purpose to correct each of the conditions mentioned, and provision for establishing a multiple purpose foundation.

[7] Bogert on Trusts and Trustees, Vol. 3, Part I, Sec. 551, p. 406: "Implied powers are those which are not clearly and directly given by settlor or a court, but which equity believes the founder of the trust or a court granting express powers intended should exist. They are implied or inferred from the terms and purposes of the trust. If a settlor has directed the trustee to reach a certain end, he must be deemed to have intended that the trustee use the ordinary and natural means for obtaining that result." Bogert, Vol. 2A, Sec. 391, p. 190: "Trustees of charitable trusts have such

protection require that it be applied here, in the interpretation of this will.

The following are some of the activities in which this Foundation may engage:

Inducements may be offered to men and women in opinion molding vocations to cause them to exercise their power.

The Foundation might control or operate a television or radio broadcasting station and thus require the men and women in its employ to mold public opinion in accordance with its policies. It could carry on such a business for profit; for the benefit of commercial interests; or for both purposes.

Commercial production and sale of magazines, newspapers, or information bulletins, to a list of paid subscribers, will enlighten those citizens who now depend mainly on what appears in the newspapers.

Instructional material could be prepared and sold commercially to editors, foreign correspondents of newspapers, and others in opinion molding vocations.

A research business might be established and operated for profit for the benefit of commercial interests in the textbook publishing field.

These are all *business activities* in areas affecting education. None of them is charitable. A trust for the per-

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powers as are expressly or impliedly given them by the settlor, or are vested in them by statute. There is little that is peculiar about the law relating to the powers of such trustees. In the main, the principles set forth elsewhere as applicable to private trusts govern here." See also Scott on Trusts, Vol. II, 2d Ed., Sec. 186, p. 1370.

petual maintenance of such a business violates the *Bishop of Durham* rule and the perpetuity clause of the State Constitution.

As original trustees the testatrix designated "The Trustees of the Leland Stanford Junior University." Respondent asserts that notwithstanding the clear language used, the bequest was to the Board and not to the trustees comprising its membership. Even if it were proper to disregard this wordage, the distinction is immaterial. The Stanford Trustees have the power to engage in non-charitable business as a Board;[8] and also as individuals. In 1946 they met and, as a Board adopted resolutions to establish the business corporation known as "*Stanford Research Institute.*" This is a wholly owned affiliate carrying on research, on a fee contract basis, for the benefit of industry. It has developed a volume of $10,000,000. Among its clients are Eastman Kodak Company, General Electric Company, General Foods Corporation and the Southern Pacific Railroad. Under fee contracts it has studied freight rates for railroads, the distribution of freight cars, marketing problems and inventory control.[9]

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[8]Exhibit 32, pp. 89-91, includes provisions of a decree of the Superior Court of Santa Clara County, California, confirming the fact that the trustees exercised the benefit of a statute empowering them to organize as a board. California Education Code, Secs. 21301-21303, constitute the statutory basis for the *Board* functioning and acting in this corporate capacity.

[9]Exhibits 25-A and 25-B contain Trustees' Minutes of Sept. 19 and Oct. 17, 1946, providing for establishment of Stanford Research Institute under the control of Respondent; see Exhibit 13, Articles of the Institute, Exhibit 20, standard form of Research Contract, and Exhibits 21, 22 and 23, brochures indicating the scope of research business.

Other noncharitable activities of Respondent include the commercial operation of a hospital and a book store.[10] Decedent's Foundation can be established as another noncharitable affiliate of Respondent according to the Stanford Research Institute plan. The possibilities are almost unlimited.

FALSE STATEMENTS IN THE OPINION.

There are nine deliberately false statements of fact and law, as follows:

(1) "In the instant case, the will restricts the use of trust property solely to charitable purposes" (Op. vi:4-5).

There is no such clause or restriction.

(2) "If the trust income is sufficient, the trustees are to establish a professorship" (Op. vi:11-13).

The will refers, in precatory terms, to a "professorship" but includes no provision imposing a legal obligation. (Will, 6:26-7:7).

(3) "Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select noncharitable objects, employ noncharitable means, or use the income for noncharitable purposes." (Op. vi:19-23).

As noted above, this will relies on *implied power* in the execution of the stated purposes and it authorizes use of that power free and clear of all restrictions.

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[10] See *Baker v. The Board of Trustees of the Leland Stanford Junior University*, 133 Cal. App. 243, 23 P. 2d 1071; and *Stanford University Book Store v. Helvering*, 83 F. 2d 710.

(4) "The trustees are given only the discretionary power to determine the particular plan for carrying out the purposes of the trust" (Op. vi:23-26).

After the Foundation has been established, its policies and plans will be determined by its own Board of Directors. There is no term requiring Respondent to remain in control. The sole responsibility of Respondent may be limited to the investment of the Trust Fund.

(5) "Stanford University . . . is organized for public benefit and not for private profit" (Op. vi:7-8).

The *educational* activities of Respondent are charitable. Its business and noncharitable ones fall into an entirely different category.

(6) "The appellants rely chiefly on Estate of Sutro, 155 Cal. 727, 102 P. 920" (Op. v:26-27).

On the contrary, our reliance is on the *Bishop of Durham* case and Article XX, Section 9, of the State Constitution.

(7) "The testatrix intended to make a bequest to the governing body of Stanford University. . . ." (Op. vii:18-20).

The bequest is to the *Trustees;* not to the Board.

(8) ". . . an ultimate purpose to promote peace and world understanding is a valid charitable purpose" (Op. iv:32-33).

Decedent's purpose was not to promote understanding, but to *overcome* handicaps by *molding public opinion.*

(9) "Bequests to promote peace and world understanding have been upheld in other jurisdictions"

There is no case in any jurisdiction where a trust to promote "world understanding" by other than educational means, has been upheld.

HALF-TRUTHS.

There are partially true but misleading statements, as follows:

(1) ". . . the testatrix desired to contribute toward world peace by providing education for newspapermen. Such a purpose is fundamentally educational" (Op. iv:17-20).

This is *one* of the stated purposes. Several others, not mentioned, include non-charitable activity.

(2) ". . . a construction of a will favorable to testacy will be adopted when the language used reasonably admits of such construction" (Op. iii:35-iv:1).

The true rule is that a trust must *first* be construed in accordance with statutory and other established rules of interpretation. There can be no ruling as to its validity until the legal meaning has been thus determined.

(3) ". . . courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good" (Op. iv:4-7).

Due process and equal protection prohibit such discrimination. The statutory rules governing construction of wills must be applied to all wills and in all cases.

SUPPRESSION OF MATERIAL FACTS.

The opinion omits reference to the following facts and issues essential to a fair review on appeal:

(1) Petitioners' reliance on the *Bishop of Durham* rule, on statutes adopting the common law, and on Article XX, Section 9, of the State Constitution.

(2) The effect of decedent's failure to prohibit the conduct of noncharitable activities or the use of noncharitable means.

(3) The silent treatment was given to the opinion of the British Court of Chancery in *Matter of Strakosch* (1949) 1 Ch. Div. 529—a case directly in point, and cited at pages 90-93 of our Reply Brief. The court there held invalid, a trust to be used "for any purpose" that would strengthen the bonds of unity between Great Britain and the Union of South Africa.[11] Candor and ordinary fairness required some mention and attempt to distinguish an authority of this importance.

EXERCISE OF LEGISLATIVE POWER.

By the misrepresentations in the opinion the District Court of Appeal concealed the fact that it was, actually, exercising the legislative power to exempt this case from

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[11] "We may observe that if this gift were to be held to be charitable it would mean that any gift in favour of 'charity' generally (i.e., *without any specific direction as to its application*) could be lawfully applied (e.g., under a scheme) to the objects here stated. . . .

"The problem of appeasing racial feeling within the community is a *political problem*, perhaps *primarily* political. One method conducive to its solution might well be to support a political party or a newspaper which had such appeasement most at heart." (1949) 1 Ch. Div. 538.

the Bishop of Durham Rule and Article XX Section 9 of the State Constitution. Further evidence of legislative intent is found in the intimation that the law ought to be changed.[12] This conduct was a denial of due process and equal protection.

WILLFUL DISREGARD OF PETITIONERS' RIGHTS.

These actions were not the result of mere error or inadvertence. They were deliberate. The Justices had the benefit of a full presentation in the briefs and on oral argument. Findings were requested, on appeal, in accordance with the record.[13] One of the Justices, who was challenged for bias, filed an affidavit alleging his ability to act "without being influenced by any consideration".[14] He then abdicated his responsibility, failing to either concur in, or dissent from the decisions of his associates. One of the Trustees of Stanford is a Justice of the State Supreme Court. Our request for appointment of a Justice pro tem was disregarded.[14a] The Supreme Court denied a hearing.

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[12]". . . the earlier decisions were somewhat quick to find the possibility of a noncharitable use, while the recent cases are less inclined to search minutely. . . . In the Sutro case as in Estate of Peabody . . . the trustees were authorized to apply the trust fund for the benefit of generally described existing institutions. . . ." (Op. v:28 vi:2).

[13]See Reply Brief pp. 67-68 citing California Code of Civil Procedure Sec. 956a authorizing the Appellate Court to make its own findings, in accordance with the evidence.

[14]See Record—Affidavit of Maurice T. Dooling in Response to Claim of Disqualification.

[14a]Justice Homer Spence. See Petition for Hearing in Supreme Court, pages 1-2.

and it also refused to investigate. Under Rules of Court, it was under a duty to act.[15]

Both the District Court of Appeal and the Supreme Court had the power and the duty to make their own interpretation of the will. They were not bound by any finding of the Trial Court. The words of the will constitute the sole evidence of decedent's intent. No other evidence was offered or admitted on that issue.[16] This Court has the same independent power to make its own determination.

MANNER OF ASSERTING FEDERAL QUESTIONS.

Petitioners raised the federal questions here involved by a Petition for Rehearing in the District Court of Appeal, and by Petition for Hearing in the State Supreme Court. Both petitions contain specific reference to the rights involved with statement of the overt acts and other circumstances. See footnote.[17] Prior to the filing of the opinion on February 16, 1959 Petitioners were not on notice and could not have anticipated the way in which their rights would be infringed.

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[15]Rule 29b provides that a hearing will be granted by the State Supreme Court material facts are omitted from or incorrectly stated in the opinion, or where substantial issues raised in the briefs are not considered.

[16]*Estate of Jones*, 130 Cal. App. 2d 196, 201; 278 P. 2d 701; *Estate of Platt*, 21 Cal. 2d 343, 352, 131 P. 2d 825.

[17]Petition for Rehearing cites 7 false statements in the opinion (pp. 2-7), prejudice resulting from disregard of 8 material facts (pp. 7-10), denial of due process and equal protection in consequence of the delivery of the false and misleading opinion, the failure to apply statutory rules of interpretation, and the act of the Court in failing to apply equal justice in accordance with *Estate of Kline*, 138 Cal. App. 514 (pp. 10-11).

Petition for Hearing by the Supreme Court refers to the same falsehoods, half-truths, and suppression of material facts (pp.

REASONS FOR GRANTING CERTIORARI.

POINT NO. 1. FALSE INTERPRETATION OF A DOCUMENT.

Petitioners were denied due process and equal protection by the deliberately false construction placed on decedent's will, and by the entry of a judgment based thereon.

The integrity of our judicial system depends on the truthful interpretation of documents in accordance with statutory and other rules. Written instruments are the foundation of our jurisprudence and our civilization. The integrity of wills, contracts, statutes, treaties and constitutional provisions must alike be maintained. If the judiciary ever gets in the position of resorting to semantic devices to defeat the rights of litigants, abuse and disrespect for law will inevitably follow.

POINT NO. 2. A FRAUDULENT OPINION.

The same reasons apply here. An added factor is the circumstance that this Court must, to a large extent rely on the opinions of lower courts in exercising its jurisdiction. Strict observance of truth is an absolute necessity as well as a constitutional requirement. Petitioners were denied due process and equal protection by the nine deliberate falsehoods, the three statements of half-truths, and by the four suppressions of material facts in the District Court of Appeal.

6.12); it charges denial of equal protection in violation of the Fourteenth Amendment as the result of a failure to apply to this case the established rules of law which are uniformly applied to others (p. 13); requests the Court to investigate the misconduct in the District Court of Appeal (pp. 20-34); includes a further statement of the federal question at pages 34-35 claiming rights under 28 USCA Sec. 1257.

In *Communist Party v. Subversive Activities Control Board*, 331 U.S. 115, 124, this Court held that an order, based in part on perjured testimony, could not be sustained, and it said:

> "It does not remove the taint for a reviewing court to find that there is ample innocent testimony to support the Board's findings. . . . We cannot pass upon a record containing such challenged testimony."

These high judicial standards, enforced in cases affecting the rights of Communists, must have equal application, force and effect, in litigation where others are involved.

In *Chessman v. Teets*, 354 U.S. 156, at 162, it was held a denial of procedural due process to settle an inaccurate transcript on appeal in a criminal case. The constitutional right to a fair and adequate appeal record includes the right to a *truthful opinion* based thereon.

POINT NO. 3. UNLAWFUL PRESUMPTION TO JUSTIFY DISCRIMINATION BETWEEN LITIGANTS.

The opinion shows on its face that the lower courts resorted to a general presumption in favor of Respondent as an alleged charity not only in disregard of the record, but in violation of California Probate Code Section 102. The words of a will must have two or more possible meanings to justify resort to any type of presumption thereunder.

Hostility toward certain litigants and favoritism toward others is clearly a denial of both due process and equal protection.

The rule against discrimination in judicial proceedings, as enunciated in *Estate of Kline*, 138 Cal. App. 514, 32 P. 2d 677 should be confirmed and given the force and effect of an authority by the decision of this Court.

POINT NO. 4. JUDICIAL EXERCISE OF LEGISLATIVE POWER.

When properly interpreted, decedent's will discloses a violation of the perpetuity laws and the rule against non-charitable discretionary power set forth in *Morice v. The Bishop of Durham*, supra. The act of the lower Court in failing to apply these constitutional and legislative principles amounted to an exercise of legislative power, and therefore a denial of due process and equal protection of the laws. This question is of major public importance because it involves a definition of the nature and scope of judicial power; its relationship to the Executive, and Legislative Departments of Government.

POINT NO. 5. MINIMUM STANDARDS IN APPELLATE COURTS.

This Court has applied the due process clause of the Fifth Amendment and corresponding provisions of the Fourteenth to proceedings before Congressional investigating committees,[18] investigating committees of State Legislatures,[19] proceedings before the Subversive Activi-

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[18] *Watkins v. United States*, 354 U.S. 178; *Flaxer v. United States*, 79 S. Ct. 191; *Sacher v. United States*, 78 S. Ct. 842.

[19] *Sweezy v. New Hampshire*, 354 U.S. 234; *Uphaus v. Wyman*, 355 U.S. 16; *Raley, et al. v. Ohio*, 354 U.S. 929; *Gibson v. Florida Legislative Investigation Committee* (Oct. Term 1958, No. 873); *Bates v. City of Little Rock* (Oct. Term 1958, No. 770); *NAACP v. Arkansas* (Oct. Term 1958, No. 772); *Scull v. Virginia Committee on Law Reform and Racial Activities* (Oct. Term 1958,

ties Control Board,[20] hearings of Federal Boards and Commissions,[21] and proceedings of State Boards of Bar Examiners.[22] It has inquired into the fairness of *trials* in both Federal and State Courts to determine the extent to which the requirements of due process and equal protection have been there observed.[23] The appellate level is the only area of importance not covered by some prior decision. It is of equal, if not greater importance. It concerns the integrity of the judicial process, public respect for the Courts, and for law and order. The Federal and State Judiciary, the Bar, and the General Public are vitally concerned.

A further reason for review here is the fact that many cases on this Court's appellate docket now involve members of racial minority groups or the claims of persons charged with communist affiliation. Certiorari is based on discrimination and violation of the Fourteenth Amendment. An objective decision on appellant standards is a virtual impossibility in such cases. That determination ought to be made in a proceeding where this factor is not present. The pending matter is such a case.

No. 51); *NAACP v. Committee on Offenses Against the Administration of Justice* (Oct. Term 1958, No. 84).

[20] *Communist Party v. Subversive Activities Control Board*, 351 U.S. 115.

[21] *Cole v. Young*, 351 U.S. 536; *Gold v. United States*, 350 U.S. 985; *Jencks v. United States*, 353 U.S. 657; *Service v. Dulles*, 354 U.S. 363.

[22] *Schware v. Board of Examiners of New Mexico*, 353 U.S. 232; *Konigsberg v. State Bar of California*, 353 U.S. 252.

[23] *Gold v. United States*, 350 U.S. 985; *United States v. Witkovich*, 353 U.S. 194; *Jencks v. United States*, 353 U.S. 657; *Slochower v. Board of Education of the City of New York*, 350 U.S. 551.

POINT NO. 6. RIGHT TO EQUAL TREATMENT IN APPLICATION OF THE BILL OF RIGHTS.

It has been repeatedly held in criminal and other proceedings involving *Personal Rights* that the due process and equal protection clauses will be strictly enforced. Petitioners, who assert *Property Rights* have been denied that protection. They are entitled to equal justice and equal treatment. The dictum on this point in *Ullmann v. United States*, 350 US 422, 428 and *Board of Education v. Barnette*, 319 US 624, 648 should be declared applicable to Property Rights, and enforced in the case at bar. We request this Court to make that determination.

POINT NO. 7. CERTIORARI AS OF RIGHT.

The Congressional debates preceding establishment of the certiorari jurisdiction show that the basis for *discretionary* review was the assumption that *all* litigants would have the benefit of *one appeal* in some court.[24] Where the appellate court denies due process and equal protection there is, in effect, *no appeal*. The basis disappears for treating certiorari as a *discretionary* matter. Review then becomes a matter of right. We submit that it was not the intent of Congress to authorize an arbitrary denial of a

[24]The Act of February 13, 1925 (43 Stat. 936) is the basis of the present certiorari jurisdiction. There was a definite understanding, in conferring the discretionary review, that litigants would have one full and adequate review, as of right. See: Hearings Before Senate Judiciary Committee, on S. 2060, 68th Cong.; Statement of Senator Reed, and Senator Walsh, Vol. 66, Cong. Rec. pp. 2755-6; Letter of Chief Justice Taft to Senator Copeland, Vol. 66, Cong. Rec. p. 2920; Report of Sub-Committee of Senate Judiciary Committee on S. 2060, 68th Cong., 1st Session (Report No. 362) p. 3; Report of House Judiciary Committee on HR 8206, 68th Cong. 2d Session, Report No. 1075, pp. 2-3.

writ in such cases. Indeed, it could not do so in view of the obligation imposed by the judicial oath provision in Article VI of the Constitution.

Petitioners are the legal heirs of the decedent Janet M. Peck, entitled as such to the residue of her estate. They have been deprived of their property rights in this estate by the violations of the Fourteenth Amendment set forth in this Petition. Their status is set forth in the footnote hereto.[25] Writs of certiorari to protect and enforce those rights are respectfully requested.

Dated, San Francisco, California,
July 8, 1959.

AARON M. SARGENT,
Attorney for Petitioners.

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[25]Decedent's closest relative was Edmund More, Jr., a first cousin who assigned one-half his interest in the estate to Petitioner Aaron M. Sargent, and subsequently relinquished his interest in the remaining one-half with the result that said share descended equally to petitioners herein as next of kin in equal degree. Since the trust was absolutely void as being contrary to public policy, in view of the provisions of the State Constitution, this relinquishment did not confirm any rights of Respondent. It merely transferred rights in residue to others. Termination of the rights of Edmund More, Jr., is now res adjudicata. For a detailed discussion on this point see Appellants' Opening Brief pp. 56-60; and Appellants' Reply Brief pp. 101-106—both of which briefs are included in the record, on certiorari.

(Appendix Follows.)

Appendix

(Vol. 168 A.C.A. 28; 335 P. 2d 185.)

In the District Court of Appeal
State of California
First Appellate District

DIVISION TWO

1 Civil No. 18,130.

In the Matter of the Estate of
Janet M. Peck,
Deceased.

Aaron M. Sargent, Cornelia M. Sargent, Madelyn Georgian, Guardian ad Litem of Helen M. Sargent, Jr., Frank M. Howell, Jr., Orrin P. Howell, Marietta Gann Bundy, Elizabeth Gann Handel, Louise Flinn, Fred Howell, Charlotte More Meloney, Frank More and Margaret More White,
Appellants,

vs.

The Board of Trustees of the Leland Stanford Junior University,
Respondent.

OPINION

The only question on this appeal is the validity of a charitable trust created by the will of Janet Peck. By a decree determining heirship and ordering preliminary distribution, the probate court found the trust valid and ordered distribution accordingly, to the Board of Trustees of The Leland Stanford Junior

University, respondent herein. Appellants assert that the trust is void and claim the estate on grounds of intestacy.

Janet Peck died in 1956, leaving an estate valued at over $480,000. Her closest surviving relative was a first cousin, Edmund More, Jr. Appellants are the children of persons who were first cousins of the testatrix. By her will, dated 1936, Janet Peck left her estate in trust to the Trustees of Stanford University, subject only to certain annuities.

Appellants contend that: (1) The trust is not a valid charitable trust as the property must not be used exclusively for educational purposes; (2) The testatrix intended to make a bequest to the trustees individually; (3) The trial court erred in denying appellant's petition for preliminary distribution and determination of heirship. Appellants have also filed a motion requesting findings on appeal, based on substantially the same contentions. There is no merit in the appellants' position.

The relevant language of the will is as follows:

"SECOND: The ever-recurring misunderstandings between the various nations and the peoples of different races which impede human progress and lead to devastating wars, are obviously attributable, in large measure, to differences of environment and language. I believe that these handicaps can be largely overcome, if the men and women whose vocation vests in them the power to mold public opinion, make a conscious effort to that end. However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds. The molding of public opinion in the United States, insofar as concerns the attitude of our

citizens toward anything foreign, rests almost entirely with the press which, in turn, must depend upon editorial staffs and foreign correspondents. Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part in what should be the foundation of one of the most important patriotic contributions which they could make to our country and the welfare of its citizens. I have therefore long cherished the hope that I might be able to do something to help toward the correction of these conditions, and to that end I hereby give and bequeath to THE TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (hereinafter referred to as my 'Trustees') all of my estate and property, both real and personal and wheresoever the same may be situate, *in trust* for the foregoing purposes,—subject to the express terms and conditions hereinafter set forth:

"(a) My said Trustees shall establish a *Foundation of World Relations,* for the aforesaid purposes; and my said Trustees shall use and apply the net income derived from said trust estate for the maintenance of said Foundation. My said Trustees, shall, in their own discretion, determine from time to time the manner in which said net income may be best expended for said purposes, in view of the amount available therefor; and they may, if they deem such course wise, postpone the expenditure of any sums for my said trust purposes, until such time as the income available therefor shall, in their opinion, be adequate to meet such expense as may be necessary to accomplish something substantial in the said field of learning [sic] to which said trust is dedicated."

We start with several fundamental principles of the law. First, that a construction of a will favorable to testacy will be adopted when the language used

reasonably admits of such construction, (*Estate of Wellings*, 197 Cal. 189 [240 P. 21]; *Estate of Dunphy*, 147 Cal. 95 [81 P. 315]; *Estate of Heywood*, 148 Cal. 184 [82 P. 755]). Second, courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor. (*Estate of Quinn*, 156 Cal.App.2d 684 [320 P.2d 219]; *Estate of Tarrant*, 38 Cal.2d 42 [237 P.2d 505, 28 A.L.R.2d 419]; *Estate of Bunn*, 33 Cal.2d 897 [206 P.2d 635]; *Collier v. Lindley*, 203 Cal. 641 [266 P. 526]; *Estate of Hinckley*, 58 Cal. 457.)

We think any reasonable construction of the language used by the testatrix indicates that the testatrix desired to contribute toward world peace by providing education for newspapermen. Such a purpose is fundamentally educational. It has long been the law in this state, that a trust for educational purposes is a trust for charitable purposes. (*Lundberg v. County of Alameda*, 46 Cal.2d 644 [298 P.2d 1]; *Estate of Yule*, 57 Cal.App.2d 652 [135 P.2d 386]; *Estate of Bailey*, 19 Cal.App.2d 135 [65 P.2d 102]; *Estate of Bartlett*, 122 Cal.App. 375 [10 P.2d 126]; *Estate of Purington*, 199 Cal. 661 [250 P. 657]; *Estate of Royer*, 123 Cal. 614 [56 P. 461, 44 L.R.A. 364]; *People v. Cogswell*, 113 Cal. 129 [45 P. 270, 35 L.R.A. 269]; *Estate of Hinckley, supra*, 58 Cal. 457.)

Nor can it be doubted in this day and time, that an ultimate purpose to promote peace and world understanding is a valid charitable purpose. Our courts have long recognized that "The enforcement of charitable uses cannot be limited to any narrow and stated formula. As has been well said, it must expand with

the advancement of civilization and the daily increasing needs of men. New discoveries in science, new fields and opportunities for human action, the differing conditions, character, and wants of communities and nations, change and enlarge the scope of charity, and where new necessities are created new charitable uses must be established. The underlying principle is the same; its application is as varying as the wants of humanity." (*People v. Dashaway Assn.*, 84 Cal. 114, 122 [24 P. 277, 12 L.R.A. 117]; see also *People v. Cogswell*, 113 Cal. 129 [45 P. 270, 35 L.R.A. 269].) Bequests to promote peace and world understanding have been upheld in other jurisdictions. (*Tappan v. Deblois*, 45 Me. 122, *Mills v. Montclair Trust Co.*, 139 N.J.Eq. 56 [49 A.2d 889]; *In re Harmon's Will*, 80 N. Y.S.2d 903.)

Appellants argue that the trust is one solely for propaganda. Even if this were so, a trust with the object of creating a more enlightened public opinion and a bequest to an organization with political purposes have been held to be valid charitable trusts in this state. (*Collier v. Lindley*, 203 Cal. 641 [266 P. 526]; *Estate of Murphey*, 7 Cal.2d 712 [62 P.2d 374].)

Appellants further argue that the language of the will permits noncharitable as well as charitable uses. The appellants rely chiefly on *Estate of Sutro*, 155 Cal. 727 [102 P. 920]. As we recently pointed out in *Estate of Rollins*, [1]163 Cal.App.2d ....., at p. ....., the earlier decisions were somewhat quick to find the possibility of a noncharitable use, while the recent cases are less inclined to search minutely for the possibility of a noncharitable use. In the Sutro case as in *Estate of Kline*, 138 Cal.App. 514 [32 P.2d 677]; *Estate of Peabody*, 21 Cal.App.2d 690 [70 P.2d 249], the

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[1]Advance Report Citation: 163 A.C.A. 242, at p. 245.

trustees were authorized to apply the trust fund for the benefit of generally described existing institutions, some of which were charitable and some of which were privately operated for profit. In the instant case, the will restricts the use of trust property solely to charitable purposes. The only institution mentioned in the will is Stanford University which is organized for public benefit and not for private profit. The trustees are to establish a Foundation of World Relations and to use the net income of the trust property for the operation of the Foundation. If the trust income is sufficient, the trustees are to establish a professorship.

Furthermore, under the terms of the founding grant, which is made applicable to all bequests to the Stanford Trustees by section 10 of article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes. Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select noncharitable objects, employ noncharitable means, or use the income for noncharitable purposes. The trustees are given only the discretionary power to determine the particular plan for carrying out the purposes of the trust. This is proper and in accord with the law. As stated in *Estate of Butin,* 81 Cal.App.2d 76 at 81, 82 [183 P.2d 304]: ". . . it is not necessary that a detailed plan of execution shall be stated. When the general nature of the trust is adequately designated, its execution may be delegated to the named trustees, subject to the approval of court. (*Russell v. Allen,* 107 U.S. 163 [2 S.Ct. 327, 27 L.Ed. 397]; 14 C.J.S. 436, § 7.)" (See also *Estate of Clippinger,* 75 Cal.App.2d 426 [171 P. 2d 567].)

Appellants also cite *Davenport v. Davenport Foundation*, 36 Cal.2d 67 [222 P.2d 11], in which one of the stated purposes of the trust was the making of annuity payments to named individuals for a period longer than that permitted by the rule against perpetuities. In the instant case, all of the annuitants, except Mrs. Railton, predeceased the testatrix, and the annuity to Mrs. Railton terminates 15 years after the death of the testatrix or the death of Mrs. Railton, whichever occurs first.

Appellants also argue that the will bequeathes the trust to the individuals who happened to be the Trustees of Stanford University at the date of her death and not to the Board of Trustees of Stanford University. The dispositive language of the will is to "the trustees of the Leland Stanford Junior University—(hereinafter referred to as 'my Trustees')." There is no ambiguity or uncertainty in this language. The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford University was in accordance with section 10 of article IX of the state Constitution which is as follows:

"... The Board of Trustees of the Leland Stanford Junior University, as such, or in the name of the institution, or by other intelligible designation of the trustees or of the institution, may receive property, real or personal, and wherever situated, by gift, grant, devise, or bequest for the benefit of the institution, or of any department thereof, and such property, unless otherwise provided, shall be held by the Trustees of the Leland Stanford Junior University upon the trusts provided for in the grant founding the university, and amendments thereof, and grants, bequests and devises supplementary thereto."

Appellants' final contention on appeal relates to the trial court's alleged failure to grant their petition for preliminary distribution and determination of heirship. This contention need not be answered here in view of our upholding the validity of the trust.

In view of the foregoing, the decrees appealed from are hereby affirmed and the appellants' motion for findings on appeal is denied.

Kaufman, P. J.

Draper, J., concurred.

Filed February 16, 1959.

Lawrence R. Elkington, Clerk.

COPY

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

Separate Appendix to Petition for Writs of Certiorari (Rule 23f)

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. .....

In the Matter of the Estate of
JANET M. PECK,
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AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

Separate Appendix to Petition for Writs of Certiorari (Rule 23f)

Introductory Statement

Pursuant to Rule 23(f) Petitioners present this supplement as a separately bound appendix to their Petition for Writs of Certiorari to set forth, in full, the portions of the documents in the transcript which show the manner in which the federal questions were raised and the rulings of the state courts thereon.

1 Civil No. 18,130

In the

District Court of Appeal, State of California

First Appellate District—Division Two

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Appellants,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

APPELLANT'S PETITION FOR A REHEARING

[Filed: March 2, 1959]

[2] *To the Honorable Herbert C. Kaufman, Presiding Justice, Maurice T. Dooling, Jr., and Murray Draper, Associate Justices of the District Court of Appeal of the State of California, in and for the First Appellate District, Division Two:*

Pursuant to Rules 27-29, inclusive, of the Rules on Appeal, adopted by the Judicial Council effective January 1,

1959, Appellants, and each of them, petition for a rehearing of the above matter in this Court, and for the following additional relief therein:

(1) Correction of the misstatements of fact and law set forth in the opinion delivered on behalf of this Court on February 16, 1959, as herein noted;

(2) Modification of said opinion to include appropriate reference to any material statements of fact and of law and improperly omitted therefrom;

(3) Findings on Appeal, in accordance with the true legal interpretation of decedent's will, and as established by the record, as more particularly set forth in the motion now on file;

(4) Entry of a judgment reversing the decree of the Superior Court and directing distribution of decedent's estate to these Appellants.

A rehearing, and the granting of such additional relief, is sought on each of the following grounds:

I.

False Statements in the Opinion

The opinion delivered on behalf of this Court on February 16, 1959, contains the following false and [3] misleading statements of fact and of law prejudicial to the constitutional rights of Appellants:

First: The false representation at page 5, line 19, of the opinion, to the effect that decedent's will prohibits non-charitable activity:

> "In the instant case, the will restricts the use of trust property solely to charitable purposes."

Note: The page numbers in brackets denote the page numbers in the original documents.

There is no such provision in this will. At pages 98-99 of their Reply Brief, Appellants discuss the consequences of decedent's failure to use the word "charitable" or prohibit non-charitable activity.

Second: The half-truth at page 4, line 5, of the opinion, suggesting that decedent's trust has as its sole purpose

> "* * * to contribute toward world peace by providing education for newspapermen. (And that) Such a purpose is fundamentally educational."

The bequest to the Trustees at C. 4:19-26 is to help toward a correction of all of the conditions mentioned in the preamble; there are a number of trust purposes, several of which are neither educational nor charitable.

Third: At page 5, line 25, of the opinion, it is falsely represented that, subject to funds being available, decedent's Trustees are required to establish a professorship:

> "If the trust income is sufficient, the Trustees *are to establish* a professorship."

These words appear in the will in subparagraph (c) at R. 6:26-7:7 (A-9), and are accompanied by preca- [4] tory words expressing decedent's "hope" and "expectation" that this may be done. No legally binding obligation is imposed.

Fourth: In the opinion, at page 5, line 31 to page 6, line 4, there is a false denial of the grant of unlimited discretionary power permitting decedent's Trustees to select non-charitable objects and employ non-charitable means in seeking to carry out the trust purposes:

> "Contrary to appellants' argument, the trustees are not given an unlimited and uncontrolled discretion to select non-charitable objects, employ non-charitable means, or use the income for non-charitable purposes."

The preamble (C. 3:25-4:19) mentions several conditions which, by their very nature, are capable of being corrected

by activities and means which may be either educational or non-educational; charitable or non-charitable. After these recitals, there is a broad general grant of power:

> "I have therefore long cherished the hope that I might be able *to do something* to help toward the correction of *these conditions*, and *to that end* I hereby give . . . all of my estate . . . in trust for the *foregoing purposes* . . ."

The trust purposes are to correct designated conditions: not to carry on an educational program. The words used permit complete freedom of choice. It would not violate the will or constitute a breach of trust for the Trustees to resort exclusively to non-charitable and non-educational activities and means. [5] The only legal way to impose such a restriction is to include such a provision in the will, which was not done. It follows that by the very words of this will, the discretionary power of the Trustees is absolute and unlimited. This Court has no power to insert or establish a condition or limitation which the testatrix did not see fit to adopt. The statement above quoted at pages 5-6 of this Court's opinion is wholly false and should be corrected.

Fifth: There is a false statement at page 5, line 27, of the opinion, concerning the Founding Grant of the University:

> "Furthermore, under the terms of the Founding Grant, which is made applicable to *all bequests* to the Stanford Trustees by Section 10 of Article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes."

By means of this half-truth, it is inferred that decedent's trust must be charitable because the Trustees of Stanford are mentioned. The facts are to the contrary.

The evidence shows conclusively that the corporate body known as "The Board of Trustees of the Leland Stanford Junior University" has both charitable and non-charitable powers, and has acted in both capacities: in its non-charitable role, it organized and is now controlling and operating the affiliate known as "Stanford Research Institute", conducting a research business on a fee contract basis, for big business interests of many sorts; that the Stanford Board has power to [6] function in the same capacity in implementing the trust provided for in decedent's will.

It is likewise a fact that decedent's bequest is in trust and not a legacy; that the trust is not for the use or benefit of any department of the University; that it is a trust to establish a foundation and maintain it with the income of the estate; that decedent was in doubt as to the willingness of Respondent to accept, indicating that doubt by the following provision at C. 8:12-17:

> ". . . if my said Trustees and/or said The Leland Stanford Junior University accept *the gift for said Foundation of World Relations*, hereinabove provided for, they must do so subject to said charge (for annuities) on both the corpus of said trust estate and all income derived therefrom."

It was the right of decedent to require Respondent to accept this trust on her terms. It must accept subject to those terms or not at all. The terms imposed prohibit including the estate in the University Endowment.

The inference in the opinion that the Founding Grant of the University impresses a charitable character on the Peck trust is false and should be corrected.

Sixth: It is falsely represented at page 6, line 31, of the opinion that

"The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford Uni- [7] versity was in accordance with Sec. 10 of Article IX of the State Constitution . . ."

There are twelve separate references in this will to the trustees as "*my* said trustees", indicating decedent's intent to have those appointed act as *her* trustees; not as trustees *for* the use or benefit of Stanford University, or any department thereof. Other clauses in the document are to the same effect. This statement in the opinion is completely false and should be corrected. See Appellants' Opening Brief, pp. 38-41.

Seventh: At page 4, line 29, of the opinion, there is a misleading statement that

"Bequests to promote peace and world understanding have been upheld in other jurisdictions."

There is no opinion in any jurisdiction sustaining such a trust where non-charitable or non-educational activities or means were permitted. See discussion on this point at pages 83-97 of Appellants' Reply Brief.

II.

Prejudice Resulting from Disregard of Material Facts

The opinion is unfair, prejudicial and in violation of the constitutional rights of Appellants in omitting appropriate reference to, and in rendering a decision in disregard of, the following material facts:

First: In failing to disclose and adequately discuss the fact that one of the conditions mentioned in the [8] preamble to decedent's will and to be corrected by her founda-

tion consists of the handicaps imposed by differences in environment and language in various nations; and that the decedent herself recognized and believed that these handicaps might be overcome "if the men and women whose vocation vests in them the power to mold public opinion make a conscious effort to that end."

Second: In declining to recognize and judicially notice that the "men and women in opinion molding vocations" constitute a large group of persons, including Senators, Congressmen, political leaders, leaders of political parties, candidates for political office, public relations counsel, advertising and public relations men, writers, lobbyists, Governors, members of State Legislatures, Chairmen and members of Committees of Congress and State Legislatures acting in fields which concern Foreign Affairs, World Relations and the molding of public opinion in reference thereto; officers, directors and key executives of business, labor, and other organizations engaged in political action and the formulation of public opinion; and also those Communist front organizations which advocate co-existence, appeasement and co-operation with Soviet Russia as a means of preventing war;

Third: In failing and refusing to recognize that the unlimited authority conferred on decedent's Trustees to correct conditions mentioned in the preamble of her will includes discretionary power to collaborate with, aid, and support, in any appropriate manner, any one, or more, or all, of these persons and organizations;

[9] *Fourth:* In failing to recognize and disclose that such aid, collaboration and support is, in its entirety, a non-charitable activity;

Fifth: In failing to recognize that another method authorized and permitted by decedent's will in aiding and supporting these men and women in opinion molding voca-

tions is to prepare, publish and distribute propaganda material for their use; that this is a non-charitable activity:

Sixth: In failing to recognize that another condition mentioned in the preamble to decedent's will is the lack of an understanding, by these opinion molders, of conditions in other nations; that this condition is one capable of being corrected, in whole or in part, by the publication and distribution of information bulletins and other materials, on a commercial basis, to a list of paid subscribers; that this is a non-charitable activity;

Seventh: In failing to recognize that one of the conditions mentioned in the preamble is the fact that the average citizen depends, for his knowledge of foreign affairs, on what appears in the newspapers; that this condition is capable of being corrected, in whole or in part, by decedent's foundation serving as a research agency and rendering assistance to commercial publishers in the textbook and book publishing field; that this is a non-charitable activity;

Eighth: That it is possible to increase the knowledge and understanding of newspaper editors and foreign correspondents respecting conditions in foreign countries by the commercial production, sale and distribu- [10] tion of instructional material dealing with those subjects, without setting up any course of study for any of them at a university; that this is a non-charitable activity.

III.

Denial of Due Process and Equal Protection of the Laws

The fundamental rights of Appellants have been violated in each of the following respects:

First: By the delivery of the false and misleading opinion filed on behalf of this Court on February 16, 1959;

Second: By the failure of this Court, as evidenced by said opinion, to apply to the case of these Appellants, the rules of interpreting decedent's will, which, under Probate Code Sections 100, 102, 104 and 106, must be applied to *all wills*, including those purporting to or alleged to establish charitable trusts;

Third: Without legal right or authority, this Court has applied a so-called presumption in favor of alleged or attempted charitable bequests, and by the use of such a presumption, it has discriminated against Appellants, as members of decedent's family, in disregard of recognized and accepted judicial standards, and without any jurisdiction or authority in law for taking, adopting, or maintaining such a position;

Fourth: This Court has disregarded the requirement of Probate Code Section 102 under which proper [11] legal force and effect must be given to all of the provisions of decedent's will. By lifting certain provisions out of context and disregarding others, the Court has sought to devise a theory whereby the invalid trust in this will might be sustained. In so acting, the Court has conducted itself in a lawless manner in disregard of the Constitution, Statutes, and precedents established in other cases. It has exercised a testamentary power not conferred on the judiciary.

Fifth: This Court has refused to recognize and apply the standard of equal justice under law, and the obligation of impartiality required by the decision of this Court in the Second District in *Estate of Kline*, 138 Cal. App. 514;

Sixth: Due process of law imposes on this Court a mandatory obligation to render a decision in accordance with precedents established by the Supreme Court in *Estate of Hinckley*, 58 Cal. 471, 509, *Estate of Sutro*, 155 Cal. 727, 738, and related cases.

[15] On each of the grounds herein set forth, Appellants submit that a rehearing should be granted; that the opinion of this Court should be modified in accordance with the law and the facts, and a judgment entered reversing the decree of the Probate Court.

Dated, San Francisco, California,
March 2, 1959.

AARON M. SARGENT,
Attorney for Appellants and Petitioners.

DOYLE & CLECAK
Of Counsel.

1 Civil No. 18,130

In the

District Court of Appeal, State of California

First Appellate District—Division Two

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of Helen M. Sargent, Jr., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Appellants.

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

ORDER DENYING HEARING

By the Court:

The Petition for a Rehearing filed in the above-entitled cause is hereby denied.

Dated March 18, 1959

Dist. Court of Appeal—First Dist. Filed Mar. 18, 1959.

LAWRENCE R. ELKINGTON, *Clerk*

1 Civil No. [illegible],130

In the

Supreme Court of the State of California

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of Helen M. Sargent, Jr., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Appellants,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

APPELLANTS' PETITION FOR A HEARING BY THE SUPREME COURT

[Filed: March 27, 1959]

[2] *To the Honorable Phil S. Gibson, Chief Justice, and Chairman of the Judicial Council, and to the Honorable Associate Justices, and Justice Pro Tem, of the Supreme Court of the State of California:*

Appellants respectfully petition and apply for the following relief:

First: Re-transfer of this appeal to the Supreme Court;

Second: A full and complete appellate review of this

case in accordance with accepted legal and judicial standards;

Third: An investigation of misconduct and irregularities in the District Court of Appeal;

Fourth: Issuance of necessary orders to secure Appellants' right to due process, equal protection of the laws, and a reversal of the decrees entered by the Probate Court.

Request for Assignment of Justice Pro Tem

Associate Justice Homer R. Spence, a member of Respondent "*The Board of Trustees of the Leland Stanford Junior University*", is disqualified herein because of his interest in the subject matter. Accordingly, the Chief Justice, as Chairman of the Judicial Council, is requested to provide for assignment of a Justice Pro Tem to secure the right of Appellants to have this application considered and acted on by a full panel of seven.

[3] *Status of the Record*

The opinion filed in the District Court of Appeal February 16, 1959, became final as to that Court on March 19, 1959. A rehearing petition filed March 2, 1959, was denied on the latter date. The period within which this Court may act under Rule 28(a) will expire April 19, 1959, in view of the intervening holidays.

Aside from the legal questions involved, the decision on this appeal depends on a correct legal interpretation of decedent's will. That document, which appears in the Clerk's Transcript at pages 3-9, is separately printed and bound in white cover, and will be cited herein as A-, with appropriate page references. Unless otherwise stated, all italics and other emphasis is ours.

Summary Statement of the Case

This is an appeal from Probate Court Decrees upholding a perpetual trust for a mixture of charitable and non-charitable objects. Such trusts violate the perpetuity clause in the State Constitution and the common law rule against discretionary non-charitable powers. By statute (Civ. Code Sec. 22.2), this principle has the force and effect of positive law and is the rule of decision in this state.[1] Trusts with these [4] discretionary powers were condemned and held invalid by the unanimous opinion of this Court in *Estate of Sutro*, 155 Cal. 727. The question is not whether such powers may in fact be exercised. It is only necessary to show that a prohibited power has been conferred. The rule is the same as that applied in cases involving Restraints on Alienation, or violation of the Rule Against Perpetuities.

Decedent's will violates these established rules by providing for creation of a Foundation to be set up after her death with charter purposes including both charitable and non-charitable objects, activities and means. The purposes of the Foundation are set forth in the Preamble to the will in Paragraph Second (A-5, 6). It is to be established to "do *something* to help toward a correction" of the following conditions:

> Handicaps caused by differences of environment and language of peoples of different races and nations, impeding human progress and leading to wars:

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[1] *Const.*, Art. XX, Sec. 9: "No perpetuities shall be allowed except for eleemosynary purposes." *Morice v. The Bishop of Durham*, 9 Vesey Jr., 399 at 405, invalidating a perpetual trust including discretionary power to devote the property to non-charitable purposes. *Political Code*, Sec. 4468, re-enacted as Civil Code Sec. 22.2, whereby the common law of England is made "the rule of decision in all courts of this state." *Estate of Hinckley*, 58 Cal. 457, at 508-509, recognizing the Bishop of Durham rule. Also, *Estate of Sutro*, 155 Cal. 727, at 734, adopting and recognizing this rule as a rule of property.

Failure of men and women in opinion molding vocations to make a conscious effort to use their power to overcome these handicaps;

A lack of understanding of these potential opinion molders, in respect to the economies, history, diplomacy and political backgrounds of the various countries of the world;

[5] An attitude on the part of our citizens toward "anything foreign" based almost entirely on what appears in the newspapers;

Woeful ignorance of these conditions on the part of members of editorial staffs and foreign correspondents of newspapers.

Neither the Foundation nor the Trustees are required to use educational means, either in whole or in part. It will be recognized that the conditions to which decedent refers are, by their very nature, capable of being corrected by either educational or non-educational; charitable or non-charitable means. The will contains no provision limiting the Trustees to activities which, in law are deemed charitable. The terms of the trust are so broad as to permit the conduct of almost any activity having any reasonable connection with any of the stated purposes. The Trustees are required to establish such a foundation and maintain it in perpetuity with net income of the estate. The residue is bequeathed as the corpus of a trust fund for that purpose.[2]

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[2]See Will at A-7, providing for the bequest to Trustees "to do something to help toward a correction of *these conditions*"; the trusteeship clause stating that the bequest is "in trust for the *foregoing* purposes, . . . and the implementing clauses, as follows:

"(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes; and* my said Trustees *shall use* and apply the net income derived from said trust estate *for the maintenance of such Foundation.*"

The District Court of Appeal upheld this trust by an opinion misinterpreting the will, containing deliberately false statements of fact, omitting reference to other facts material to the issues, and engaging in [6] misconduct of such character as to deprive Appellants of due process and equal protection of the laws. The opinion containing these falsehoods, half truths, and misrepresentations, was delivered by the Presiding Judge. Only *one* Justice concurred. Appellants sought to correct these errors and infringements of their rights by a petition for rehearing, but were unsuccessful. They are compelled to apply to this Court for relief.

There has been a breakdown in the judicial process; a failure to exercise appellate jurisdiction. Our appeal involves more than the rights of the parties to this record. It is concerned with the integrity of the judiciary—the constitutional right of a litigant to a truthful, honest, and impartial decision in an appellate court. The circumstances are such as to warrant a full scale investigation.

Falsehoods and Half Truths

This opinion of the Presiding Judge is untruthful and misleading in each of the following respects:

First: It is stated that

> "In the instant case, the will restricts the use of trust property solely to charitable purposes."[3]

There is no such provision. At pages 98-99 of our Reply Brief we discuss the consequences of decedent's *failure* to use the word "charitable" or *prohibit* non-charitable activity.

[7] *Second:* There is a half truth suggesting that decedent's trust has, as its *sole purpose*,

[3]Op. vi:4-6.

". . . to contribute toward world peace by providing education for newspapermen. (And that) such a purpose is fundamentally educational."[4]

While providing education for newspapermen may be *one* of the purposes of the trust, it clearly is not the *sole object* because the stated objects of the trust are to do something to help toward the correction of *all* of the *conditions*[5] mentioned in the Preamble.

Third: It is falsely represented that, subject to funds being available, decedent's Trustees are *required* to establish a professorship.[5]

Fourth: There is a false denial that decedent made a grant of unlimited and uncontrolled discretion to select non-charitable objects or means.[6]

The clause providing for the bequest in trust shows on its face that there is an unlimited grant of discretionary power. Decedent states therein:

> "I have therefore long cherished the hope that I might be able to do *something* to help toward a correction of these conditions and *to that end* I hereby give and bequeath to (the Trustees) . . . [8] all of my estate and property, . . . *in trust*, for the *foregoing purposes*, . . .
>
> "(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;* and my said Trustees shall use and apply the net income derived from said trust estate for the maintenance of said Foundation." (C 4-5; A-6, 7.)

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[4]Op. iv:18-20.

[5]See Op. vi:12, where it is stated: "If the trust income is sufficient, the Trustees *are to establish a professorship.*" The will contains precatory words expressing decedent's "hope" and "expectation" that this *may* be done, but no legally binding obligation is imposed. See will at C 6:26-7:7 (A-9).

[6]Op. vi:19, "Contrary to appellants' argument, the Trustees are not given an unlimited and uncontrolled discretion to select non-charitable objects, employ non-charitable means, or use the income for non-charitable purposes."

Where a decedent makes such a bequest, in trust, for the correction of stated conditions with no provisions outlining the means to be employed or the activities in which the Foundation and the trust may engage, it follows as a matter of law that absolute discretion is conferred; that there is an unlimited power of selection. In such a case the law implements the trust by recognizing the existence of all power needed to enable the trustees to execute decedent's plan. The invalid discretionary power is granted by these words of the will and also by implication.

Fifth: It is falsely stated that the Founding Grant of the University will prevent use of this trust fund for private purposes.[7]

This is not a bequest to Stanford, to any University Department or Departments, or for the use or benefit of the University or any Department thereof. It is a trust to establish a Foundation and maintain it with net income of the estate. The terms of decedent's [9] trust prohibit her Trustees from making the estate a part of the University Endowment. It is to be held in trust for other purposes. Furthermore, Respondent has both charitable and non-charitable powers and has acted in both capacities on many occasions. It is presently conducting a research business on a fee contract basis through an affiliate known as "Stanford Research Institute."

Sixth: It is falsely stated that decedent intended to make a bequest to the governing body of the University.[8]

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[7] Op. vi:14. "Furthermore, under the terms of the Founding Grant, which is made applicable to *all bequests* to the Stanford Trustees by Section 10 of Article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes."

[8] Op. vii:18. "The testatrix intended to make a bequest to the governing body of Stanford University as the trial court found. The court's finding and distribution to the Board of Trustees of Stanford University was in accord with Sec. 10 of Article IX of the State Constitution . . .".

There is no such provision. The bequest is to the persons who are trustees and not to the Board in its corporate capacity. In twelve different clauses decedent refers to these Trustees as "*my* said Trustees", indicating her intent that they act for her benefit and not for the benefit of the University.[9] There is no provision requiring the Foundation to be established at Stanford or to engage in activities in any way connected with Stanford. This *may* in fact occur. There is no such legal requirement.

Seventh: Finally, there is the misleading statement that "bequests to promote peace and world understanding have been upheld in other jurisdictions."[10]

[10] No trust containing the broad and unlimited delegation of power here present, or seeking to accomplish promotion of peace and world understanding by other than exclusively educational means, has ever been sustained by any court or in any jurisdiction.

Suppression of Material Facts

The opinion is unfair, partisan, prejudicial, and a violation of constitutional rights in omitting reference to and in rendering a decision in disregard of the following material facts:

First: In failing to disclose that one condition mentioned in this will consists of handicaps imposed by differences in environment and language in various nations; that the decedent herself recognized and believed that those handicaps might be overcome "if the men and women whose vocation vests in them the power to mold public opinion make a conscious effort to that end."

Second: In failing to disclose and take judicial notice of the fact that these "men and women" constitute a large

[9] See Appellants' Opening Brief, pp. 38-41.

[10] Op. v:12.

group of persons, including Senators, Congressmen, political leaders, candidates for public office, advertising and public relations men, writers, lobbyists, Governors, members of State Legislatures; and Chairmen and Members of Foreign Affairs Committees of Congress and State Legislatures;

Third: In failing to disclose that decedent's Trustees, and her Foundation, are given express and implied authority, in seeking to correct designated con- [11] ditions, to engage in political action, dissemination of propaganda, collaboration with, aid, and support—in any appropriate manner—of any one, or more, or all of these persons and their respective organizations;

Fourth: In failing to disclose that such aid, collaboration, and support is, in its entirety, a non-charitable activity;

Fifth: In failing to disclose that another method authorized and permitted by decedent's will in aiding and supporting the men and women in opinion molding vocations is to prepare, publish, and distribute propaganda material for their use; that this is a non-charitable activity;

Sixth: In failing to disclose that a condition mentioned in the Preamble to decedent's will is lack of an understanding, by these opinion molders, of conditions in other nations; that this deficiency is one capable of being corrected, in whole or in part, by the publication and distribution of information bulletins and other materials on a commercial basis, to a list of paid subscribers; that this is a non-charitable activity;

Seventh: In failing to disclose that another condition mentioned in the Preamble to said will is the fact that the average citizen depends, for his knowledge of foreign affairs, on what appears in the newspapers; that this situation is capable of being corrected, in whole or in part, by decedent's Foundation serving as a research agency and

rendering assistance to commercial interests in the book publishing field; that this is a non-charitable activity;

[12] *Eighth:* In failing to disclose that the knowledge and understanding of newspaper editors and foreign correspondents in respect to conditions in foreign countries may be increased, developed, and made more effective by the commercial production, sale and distribution, of instructional material dealing with those subjects, without setting up or conducting any course of study for these people at a university; that the production and distribution of such instructional material is a non-charitable activity.

Denial of Due Process and Equal Protection of the Law in Substantive Matters

There has been a denial of due process and equal protection in the following respects:

First: By failing to restrict the determination of decedent's intent solely to the words of the will.

In *Estate of Young*, 123 Cal. 337, 344, 55 P. 1011, this Court held that the intention to be sought for is not that which existed in the mind of the testator, but that which is expressed in the language of the will.

In *Estate of Duesen*, 30 Cal. 2d 285, 182 P.2d 565, the rule was confirmed and it was held that there can be no reformation of a will even on the ground of accident or mistake.

The decisions of the District Courts of Appeal in *Estate of Sowash*, 62 Cal. App. 512, 217 P. 123; *Estate of Maloney*, 27 Cal. App. 2d 332, 80 P.2d 998; *Estate of Lyons*, 36 Cal. App. 2d 92, 96 P.2d 1018; *Pearson v. Hanson*, 96 Cal. App. 2d 394, 215 P.2d 529; and [13] *Estate of McAuliffe*, 132 Cal. App. 2d 476, 282 P.2d 541, are to the same effect.

This legal principle, which is a rule of property, is based on Sections 50 and 53 of the Probate Code requiring that

wills be *in writing*, and either duly witnessed, or entirely in the handwriting of the testator. Probate Code Section 105, prevents the use of extrinsic evidence except where uncertainty arises on the face of the document.

These established rules of law are applied uniformly to cases involving *other litigants*. Appellants have been denied the benefit of their protection and equal application in violation of the Fourteenth Amendment to the Constitution of the United States.

Second: The words of the will have not been taken in their ordinary and grammatical sense; technical words have not been taken in their technical sense—as required by Section 106 of the Probate Code.

These statutory requirements are applied uniformly and without discrimination in *other cases*. They have not been enforced or recognized in the case at bar. The constitutional rights of Appellants have been infringed in this respect."

"The Court disregarded the meaning of the word "*my*" in the phrase "*my* said Trustees", appearing in *twelve* different parts of the will (see Op. Br. 38-41); it disregarded the meaning and purpose of the "and/or" clause at A-11, indicating the possibility that there might be no acceptance by the Stanford Board in its corporate capacity, or participation by the University, with the result that substitute trustees might be appointed and act in a manner in no way connected with the University; it failed to hold that the reference to a "professorship" at A-9 was permissive and not legally binding, and that the words "hope" and "expectation" were used in a precatory sense; it failed to recognize the clear purpose and intent of decedent in using the plural form in respect to the words "conditions" and "purposes" to show that her Foundation and Trust Fund were to have multiple purposes—a purpose to help correct each of the conditions mentioned in the Preamble; it refused to give to the words "overcome", "mold" and "conscious effort" their true meaning, which discloses an intent to use propaganda to control public opinion and sources of information; and it failed to recognize the technical difference and distinction between the trustees of Stanford University and the corporate body known as "The Board of Trustees of the Leland Stanford Junior University."

[14] *Third:* Material parts of the will have been disregarded and treated as of no force or effect, in violation of Probate Code Section 102.[12] That code section is uniformly applied in *other cases*. Appellants have been denied the benefit of its protection.

Fourth: The rule expressed in Probate Code Sec. 104 that a clear and distinct bequest can not be affected "by any reasons assigned therefor, . . . or by inference or argument from other parts of the will", was disregarded.

An application of these rules and statutory requirements to the will would have established the invalidity of the trust and required a reversal. The failure to give Appellants the benefit and the equal protection [15] of those principles has deprived them of their property rights in violation of the Fourteenth Amendment.

Denial of Due Process and Equal Protection by Failure to Comply With Decisions of the Supreme Court

Due process and the equal protection requires District Courts of Appeal to recognize, and apply without discrimination, the precedents established by the decisions of this Court, and it imposes on this Court a corresponding duty to enforce compliance therewith. Appellants have been thus denied due process and the benefit of the equal protection of the laws in the following respects:

First: By a failure to enforce the rule in *Estate of Sutro*, 155 Cal. 727, under which decedent's trust is invalid;

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[12] All of the Preamble, except the clause referring to the need for education of newspaper editors and foreign correspondents, has been disregarded; the Court ignored the consequence of decedent's use of express terms in respect to the administration of her Trust Fund and her reliance on implied power as to the establishment of the Foundation and the execution of its charter purposes (see App. Reply Br. pp. 4-6); and it gave no effect to the expression of decedent's belief that the handicaps of environment and language could be overcome if men and women in opinion molding vocations make a conscious effort to that end (A-5).

Second: By a failure to apply the rule in *Morice v. The Bishop of Durham*, 9 Vesey Jr. 399, which, by virtue of Section 22.2 of the Civil Code, is the Rule of Decision;

Third: There was discrimination in failing to enforce the prohibition against non-charitable perpetuities set forth in Article XX, Section 9, of the State Constitution.

[20] *Evidence of Misconduct*

Appellants' Opening Brief was filed June 25, 1958; the brief of Respondent on September 19, 1958. This latter brief employed the technique of falsehood, half truth, and suppression of material facts, we find in the opinion of the Presiding Judge. Recognizing that implication and purpose in Respondent's brief, we filed a reply on December 22, 1958, exposing these untruths and demonstrating that the words of the will required an altogether different interpretation, and a reversal.

Shortly, thereafter, the case was set for hearing, being calendared for February 10, 1959. We filed an affidavit pursuant to Section 170 of the Code of Civil Procedure, seeking disqualification of Associate Justice Dooling on the ground of bias. His answer, filed January 21, 1959, included the following statement:

> "... I can act upon said appeal without being influenced *by any consideration* except the law as [21] I find it and the facts as revealed by the record on appeal."[13]

On January 23, 1959, we filed an Application for Findings on Appeal pursuant to Rule 23(a) and Section 956a of the Code of Civil Procedure. In reply, Respondent filed a general statement to the effect that the proposed findings were

[13] Answer of Maurice T. Dooling, Jr. to Claim of Disqualification at page 5.

unnecessary.[14] The matter was called for oral argument on February 10, 1959, when the Presiding Judge made the following statement:

> "Counsel, we are familiar with the briefs and the record in this matter, unless you have something new to add."[15]

Appellants did have "something new to add". They pointed out that this will contained words with a single meaning; that there was no right under Probate Code Section 102 to adopt any presumption in favor of alleged charity or against intestacy; that the recent opinion of the Court in *Estate of Rollins*, 163 A.C.A. 242, was not in point; that the Court had no power to reverse the decision in *Estate of Sutro*, 155 Cal. 707, or modify the rule there expressed; that there was no judicial power to alter the provisions of [22] this will under the guise of interpretation. In support of that proposition we cited the recent decision of the District Court of Appeal for the Third District in *Pearson v. Hanson*, 96 Cal. App. 2d 394.

The oral argument for Respondent was perfunctory, counsel deeming it unnecessary to reply.

When the opinion was filed, it disclosed partisanship, bias and discrimination on its face. It was based almost entirely on the brief of Respondent. There was no reference to substantial questions raised in our Opening Brief, our Reply Brief, or on oral argument. Quite obviously, everything had been worked out in advance.

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[14]See "Opposition to Appellants' Application for Findings on Appeal" at page 2: "The trial court made all requisite findings of fact (Rep. Tr. pp. 183-194) based upon the will and the extrinsic evidence introduced at the hearing. Those findings, and each of them, are correct, and no additional findings are required to support the judgment and decree of the trial court."

[15]Reporter's Transcript of Proceedings of February 10, 1959 at page 3.

The original typewritten opinion filed by the Presiding Judge was prepared with only one line for a concurring signature. Apparently it was determined that only one Associate Justice was willing to concur. Only two court days were available after the submission date, for preparing the opinion.[16] The care, time and study needed for the drafting of such a document indicate that more than two days' time was required.

The attitude and conduct of Associate Justice Dooling is a fact of importance. On January 21, 1959, this Justice stated, under oath, that he could act [23] "without being influenced by *any consideration*" except the law as he found it and the facts as disclosed by the record. Three weeks later he sat on the panel and after that he exhibited lack of freedom from influence by standing on the side lines as a spectator, observing everything, but doing nothing. Although unwilling to concur in the opinion he lacked the courage required for a dissent. Certainly he could have filed a dissenting opinion—unless the Presiding Judge rushed the matter through in so short a time as to afford no opportunity! If thus deprived of his right of dissent, the Justice could surely have dissented from the denial of the Petition for Rehearing filed two weeks later, and not acted on until March 18, 1959.

The evident haste in attempting to dispose of this matter is significant. In order to determine the extent to which there has been a departure from the usual course of judi-

[16] On Tuesday, February 10, 1959, the Court was in session most of the day for oral argument in this case and other matters on the calendar. Thursday, February 12, 1959—Lincoln's Birthday, was a holiday and all State Courts were closed. Saturday and Sunday, February 14 and 15, 1959, were also holidays and the opinion was filed on the morning of Monday, February 16, 1959. The only time left for preparing the opinion was Wednesday, the 11th, and Friday, the 13th.

cial business, we have examined the records of the Court for Division Two of this District, in Probate matters, with the following result:

The minimum time required by Justice Dooling for preparation of an opinion is sixty-three days;[17]

[24] The minimum as to Justice Draper, when there are two concurring signatures, is twenty-four days.[18]

The minimum for the Presiding Judge is *twenty-six days*.[19] His opinion in *Estate of Jane Lathrop Stan-*

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[17] *Tassi v. Tassi*, 160 Cal. App. 2d 680, decided May 21, 1958; opinion by Dooling, concurred in by Kaufmann and Draper, submitted February 10, 1958—100 days; *Estate of Gagliasso*, 150 Cal. App. 2d 65, decided April 11, 1957, opinion by Dooling, concurred in by Kaufmann and Comstock, pro tem., submitted January 16, 1957—85 days; and *Estate of Trainer*, 161 ACA 392, opinion by Dooling, concurred in by Kaufmann and Draper, decided June 17, 1958; submitted April 15, 1958—63 days.

[18] *Bernstein v. Rubin*, 152 Cal. App. 2d 51, decided June 24, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted May 14, 1957—41 days; *Duncan v. Kahn*, 151 Cal. App. 2d 402, decided May 29, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, where oral argument was waived May 1, 1957 on filing of appellant's reply brief—28 days; *Estate of Tourny*, 154 Cal. App. 2d 501, decided October 18, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted September 10, 1957—38 days; *Pollard v. Pollard*, 166 ACA No. 4 page 800, decided January 5, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted December 8, 1958—28 days; *Estate of Guigbout*, 155 Cal. App. 2d 814, decided December 9, 1957, opinion by Draper, concurred in by Kaufmann and Dooling, submitted November 13, 1957—26 days; *In re Davis*, 162 ACA No. 4 page 658, decided August 8, 1958, opinion by Draper, concurred in by Kaufmann and Dooling, submitted July 15 1958—24 days; *Estate of Dow*, 167 ACA No. 4 page 799, decided February 9, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted January 13, 1959—27 days; *Estate of Anderson*, 166 ACA No. 1 page 37, decided December 11, 1958, opinion by Draper, concurred in by Kaufmann and Martinelli, pro tem., submitted November 12, 1958—29 days; and *Bundy v. Bank of America*, 167 ACA No. 1 page 1 decided January 8, 1959, opinion by Draper, concurred in by Kaufmann and Dooling, submitted December 9, 1958—30 days.

[19] *Estate of Herbert Edward Law*, 50 AC No. 9 page 279 (1 Civ. No. 17563, opinion by Kaufmann, concurred in by Draper and

ford, delivered in favor of the Stanford Board of Trustees required *ten days* but there were two concurring signatures (1 Civ. No. 17187).

[25] *Estate of Rollins*, 163 A.C.A. No. 2 p. 242 filed without the signature of the Presiding Judge, was under submission for seventeen days.

The Petition for Rehearing requested correction of seven deliberately false statements in the opinion; it referred to eight overt acts involving suppression of truth; it cited the failure to decide four substantial issues raised in the briefs; and it requested the Court to pronounce judgment in accordance with decisions of this Court and opinions in other Districts. The failure to recognize and grant relief on such an application can only be explained on the basis of misconduct.

The order of March 18, 1959, denying rehearing, was "By the Court", and signed by the Presiding Judge, but contained no counter-signature. In consequence, it is impossible to determine who concurred, whether any Associate Justice concurred, or what may have been the arrangement. There was no dissent.

Admissibility of Circumstantial Evidence

In cases involving malice, fraud, or other misconduct, the law admits proof based on circumstantial evidence and the adoption of inferences justified thereby. We cite the following authority in support of that proposition.

Dooling; submitted November 13, 1957 and decided December 9, 1957—26 days; and *James v. Pawson*, 162 ACA No. 5, page 798, decided August 13, 1958, opinion by Kaufmann, concurred in by Dooling and Draper, where oral argument was waived on filing appellant's reply brief. An exception exists in *Estate of Coffey*, 161 ACA No. 2 page 298, submitted June 9, 1958, and decided June 11, 1958, with opinion by Kaufmann, concurred in by Dooling and Draper, where there was a matter pending at Los Angeles which depended on the ruling of the court here.

Davis v. Hearst, 160 Cal. 143, 155, 116 P. 530, 540, was a libel case requiring proof of malice. The Court said:

> "As to the nature of the evidence as has been said, it may be direct (or express, as the Code [26] names it), going to the declarations, acts, and conduct of the defendant, showing personal ill will toward the plaintiff; but it will more usually be indirect or inferred (the implied malice in fact of the Code definition), and to this end of proving the malice inferentially all legitimate evidence is admissible bearing upon the general course of conduct of the defendant toward the plaintiff, the internal evidence furnished by the character of the libel, and any other specific facts and circumstances not in direct proof of the malice, but from which the existence may be logically inferred, herein including the circumstance, if it be found to exist, of wanton recklessness and heedlessness of plaintiff's rights."

See also *Blank v. Coffin*, 20 Cal. 2d 457, 460, 126 P.2d 868, at 870:

> "An inference is a conclusion as to the existence of a material facts that a jury may properly draw from the existence of certain primary facts . . .
>
> "It is not always possible for a party to a lawsuit to introduce evidence directly bearing upon the existence of a fact that he is attempting to prove. The evidence available to him may serve only to establish the existence of certain primary facts that are logically connected with the material fact. If a jury can reasonably infer from these primary facts that the material fact exists, the party has introduced sufficient evidence to entitle him to have the jury decide the issue."

Badges of Fraud

[27] In cases involving conveyances or transfers in fraud of creditors, the use of circumstantial evidence is common. Overt acts justifying an inference of fraud are termed

"Badges of Fraud." The discussion of that subject at 37 Corpus Juris Secundum, page 922, et seq. includes reference to the following:

> "Badges of fraud are suspicious circumstances which, if unexplained, warrant an inference of fraud."

Among the "Badges" mentioned are:

Transactions not in the usual course or mode of doing business;

Concealment; failure to record a conveyance; unusual delay in recording it;

Secrecy and haste in consummating a transaction;

Falsehood; concealment of essential facts.

Comparison of the Misconduct with Facts in Other Cases

We are entitled to introduce, for purposes of comparison, evidence concerning other cases where misconduct is established by the records. Pursuant to Section 956a of the Code of Civil Procedure, and Rule 23(b), Appellants apply for leave to introduce the following into the record for that purpose; and as additional evidence in support of this petition:

Case No. 1: Estate of James G. Fair, Deceased, involving payment of a $410,000.00 bribe to former [28] Justice Frederick W. Henshaw to secure granting of a rehearing and a decision invalidating the trust created by the will of the late Senator Fair. This proceeding exhibits the following characteristics:

(a) Use of a plausible but dishonest concurring opinion to justify invalidation of the trust;

(b) Admission on the part of the children of decedent in respect to their participation in the fraud, by the compromise and settlement of a superior court action brought to recapture the property distributed as a result of the fraud.

The documentary evidence offered consists of:

(a) February 26, 1900, opinions in *Estate of Fair*, reported at 60 P. 442;

(b) April 30, 1901, opinions in *Estate of Fair*, reported at 132 Cal. 523, 64 P. 1000;

(c) Excerpts from the record in Action No. 97539, San Francisco Superior Court, filed May 15, 1919, and entitled "Wesley E. Crothers, et al., Plaintiffs, v. Theresa A. Oelrichs, et al., Defendants", as set forth in the affidavit filed herewith;

(d) Report of J. R. Densmore, Director General of United States Employment Bureau, appearing at page 7, in Nov. 23, 1918, issue of San Francisco Examiner.[20]

[29] *Consequence of the fraud:* The bulk of an estate valued at $12,228,998.07 was distributed on the ground of intestacy to decedent's son, Charles L. Fair, and his daughters, Virginia Fair (Vanderbilt) and Theresa A. Oelrichs. These children, and their successors in interest, were the parties who compromised and settled the recapture suit.

Case No. 2: Estate of James L. Flood, Deceased, involving conduct of George H. Buck, former Judge of the Superior Court of San Mateo County, in arbitrarily taking from the jury, the case of Constance May Gavin, claiming

[20]States that George Knight, attorney for Charles Fair, a son of the decedent, James G. Fair, made payments through W. J. Dingee, a friend of Justice Henshaw, whereby $10,000.00 would be paid on the granting of a rehearing and decedent's heirs would pay the further sum of $400,000.00 if the final decision was favorable. That Herman Oelrichs, husband of a daughter of decedent, signed a note in Dingee's favor for $400,000.00 as attorney for his wife, depositing the note for safekeeping with W. F. Herrin, of the Southern Pacific; that the payments were made by a series of checks of $50,000.00 each, drawn by S. G. Murphy, President of First National Bank, extending over several weeks; that corroboration was obtained from F. A. Losh, bookkeeper for Dingee.

rights of inheritance as the illegitimate daughter of decedent; and in thereafter denying motion for a new trial. This case exhibits the following characteristics:

(a) Partisanship, bias, and prejudice of such character as to indicate influence;

(b) Continued domination of the same influence on motion for a new trial;

(c) Probable collusion between counsel and the Court in respect to these proceedings.

The documents offered consist of:

Reporter's Transcript of proceedings before Superior Judge George H. Buck in SF Case No. 14581 in the files of this Court;[21]

[30] Opinion in *Estate of Flood*, 217 Cal. 763, 21 P.2d 579.

Consequence of the fraud: The claimant, Constance May Gavin, was deprived of her right to a two-ninths interest in an estate appraised at $8,565,507.85. After a reversal of the judgment, on appeal, it is reported that the claim was settled by payment of $1,025,000.00.[22]

Case No. 3: People v. Eugene E. Schmitz, an opinion invalidating the indictment against Schmitz during the San Francisco graft prosecutions of 1906-08 on the ground that the Court was unable to take judicial notice of the fact that he was the mayor of the City of San Francisco.

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[21] A recital of the events culminating in the action of Superior Court Judge Buck in taking this case from the jury, is set forth in the book by Willa Okker Iverson, "The Strange Case of Constance Flood", at pages 355-356, it being indicated that at the conclusion of the testimony, counsel for decedent's widow handed the Judge a memorandum which he proceeded to read and act upon without prior notice to counsel, and without receiving oral argument. By such arbitrary action, the jury was instructed to bring in the verdict set aside by the opinion of this Court in *Estate of Flood*, 217 Cal. 763, 21 P. 2d 579.

[22] Iverson Book, page 372.

This case exhibits the following characteristics:

(a) Use of an opinion "By the Court" to avoid disclosing the identity of the Justices concurring in the decision;

(b) The technique of an intellectually dishonest opinion, to support discrimination favoring persons with power and influence.

The evidence offered consists of:

(a) Opinion in *People v. Schmitz*, reported at 7 Cal. App. 369-375;

[31] (b) History and background of the San Francisco graft prosecutions, which are a matter of such general knowledge as to be the subject of judicial notice.[23]

Consequence of the fraud: Crippling of the San Francisco graft prosecutions; delay in the trial of cases; a factor contributing to the eventual dismissal of all graft indictments except the one against Abraham Ruef.

Case No. 4: Denicke v. Anglo California National Bank, involving use of an intellectually dishonest opinion, filed without countersignature during an adjournment of court, as a device (a) to throw a case out of court and (b) to evade the duty to exercise appellate jurisdiction.

In this matter, the Clerk entered a "decree" in violation of court rules; the "opinion" was published in 141 F.2d 285, as an opinion of the Court, without disclosing irregularity of the signature clause; a false record was certified on peti-

[23]One of the best works on this subject is undoubtedly "Boss Ruef's San Francisco—The Story of the Union Labor Party, Big Business, and the Graft Prosecution," by Professor Walton Bean, Department of History, University of California (Berkeley). Research materials for the book, which received the Commonwealth Club non-fiction award in 1952, are deposited in the Bancroft Library at Berkeley.

tion for certiorari, and there was no exercise of appellate jurisdiction by either the Circuit Court of Appeals or the Supreme Court.

The documents offered consist of:

(a) Published opinion in *Denicke v. Anglo California National Bank*, at 141 F.2d 285;

[32] (b) Petition for Writ of Certiorari filed in the Supreme Court as October Term 1944 Case No. 155, which discloses the irregularities mentioned.

Consequence of the misconduct: Twenty-three present and former Directors of the Anglo California National Bank were released from liability for negligence, fraud, and misconduct, in respect to losses totaling $4,029,449.52[24] It became impossible by deposition and use of federal process to investigate misconduct affecting officers of the Reconstruction Finance Corporation and other federal agencies.

Case No. 5: People v. Abraham Ruef, involving an irregular order granting a hearing after decision by the District Court of Appeal. Justice Henshaw signed the order before the opposing brief of the Attorney General had been filed, and then left the state. Three other Justices concurred subsequently. The order was held invalid because of the lack of a sufficient number of valid concurring signatures.

The important characteristic of this case is the fact that it seems to be the device relied on by Circuit Judge Healy in *Denicke v. Anglo California National Bank* in filing his

[24] Mortimer Fleishhacker, Herbert Fleishhacker, Mortimer Fleishhacker, Jr., George I. Cochran, Philip S. Baker, R. D. Brigham, Walter E. Buck, Walter A. Haas, Paul E. Hoover, William F. Humphrey, Samuel Kahn, Victor Klinker, William B. Reis, Paul Shoup, Leon Sloss, Jr., Louis Sutter, Alfred B. Swinerton, T. C. Tilden, Joseph O. Tobin, Willard O. Wayman, Irene L. Berg, Executrix of the will of William H. Berg, Deceased, R. Stanley Dollar and Frank Moss.

"opinion" without countersignatures during a court adjournment. In respect to the [33] matter of *People v. Ruef*, we offer the opinion recorded at 14 Cal. App. 620-632.

Case No. 6: Opinions of former Circuit Judge Martin T. Manton, involving the device of plausible but dishonest opinions, concurred in by other justices, as a means of soliciting and obtaining bribes. The important characteristic of the *Manton* Cases is the extent to which such opinions may be used as a device to defraud litigants and deprive them of their constitutional rights. The decisions offered in respect to this matter are the following:

(a) *United States v. Manton*, 107 F.2d 834, affirming conviction of Circuit Judge Manton on charge of conspiracy to defraud and obstruct the administration of justice;

(b) *Art Metal Works, Inc. v. Abraham & Straus, Inc.*, 61 F.2d 122, involving bribes totaling $15,000.00 (107 F.2d 840);

(c) *Smith v. Hall*, 83 F.2d 217, involving $75,000.00 bribe;

(d) *General Motors Corp. v. Preferred Electric & Wire Corp.*, 79 F.2d 621; and *Lotsch v. Kelley*, 86 F.2d 613, involving demands for bribes totaling $25,000.00.

Consequences of Misconduct in the Peck Case

Distribution of property having a value in excess of $500,000.00;

An opportunity for textbook publishers and other commercial interests to profit financially from estab- [34] lishment of a non-charitable research affiliate under decedent's will;

Use of her Foundation to disseminate propaganda, control the press, and influence public opinion;

Exercise of financial control over her Foundation by one of the large tax-exempt funds seeking this objective.

The abuses possible are practically unlimited. During the second session of the 83d Congress, the House of Representatives investigated the monopoly power and influence exerted by some of the large tax-exempt foundations over education and public affairs.[25]

Statement of the Federal Question

In consequence of the denials of due process and equal protection of the laws in respect to both procedural and substantive matters, Appellants, and each [35] of them, have been deprived of rights, privileges and immunities conferred upon them by the Fourteenth Amendment to the Constitution of the United States. They hereby give notice of their intention to enforce and protect those rights pursuant to Title 28, United States Code, Section 1257, in the event that appropriate relief cannot otherwise be obtained. Because of these denials of constitutional rights, Appellants respectfully submit that an appeal lies to the Supreme Court of this state, as of right, from the decision of the District Court of Appeal.

[25] House of Representatives Special Committee to Investigate Tax Exempt Foundations (the Reece Committee) established by H. Res. 213, See Report of Reece Committee p. 17: "The power of the individual large foundation is enormous: It can exercise various forms of patronage which carry with them elements of thought control. It can exercise immense influence on educational institutions . . . It is capable of invisible coercion through the power of its purse . . . It can play a powerful part in the determination of academic opinion, and, through this thought leadership, materially influence public opinion . . .

"The far reaching power of the large foundations and of the interlock, has so influenced the press, the radio, and even the government that it has becomes extremely difficult for objective criticism of foundation practices to get into news channels without having first been distorted, slanted, discredited, and at times ridiculed. Nothing short of an unhampered Congressional investigation could hope to bring out the vital facts; and the pressure against Congressional investigation has been almost incredible."

[36] *Public Importance of the Misconduct Issue*

Senate Constitutional Amendment No. 14, now pending in the Legislature, will add a new Section 10b to Article VI, to include the following:

> "A justice or judge of any court of this State, in accordance with the procedure prescribed in this section, may be removed for willful misconduct in office . . . The Commission on Judicial Qualifications may, after such investigation as the commission deems necessary, order a hearing . . . If at such hearing it finds good cause therefor, it may recommend to the Supreme Court the removal or retirement of the justice or judge.
>
> "Upon application of the justice or judge the Supreme Court shall review the record of the hearing before the commission on the law and facts and in its discretion may permit the introduction of additional evidence and shall order removal or retirement, as it finds just and proper . . ."

This proposal is supported by the Judicial Council and the State Bar of California and has the endorsement of two Justices of this Court as members of the Council.[27]

Such Amendment, if adopted, will protect the public interest by providing for removal, in proper cases, without resort to the cumbersome procedure of impeachment. However, it will not protect the rights of litigants who must continue to rely on a full exercise [37] of this Court's power of transfer under Article VI, Section 4c, of the Constitution.

Grounds Relied on in Support of Petition

Appellants rely on each of the following ground in support of their Petition for a Hearing and Decision by the Supreme Court:

[27] 17th Biennial Report of Judicial Council of California to the Governor and the Legislature, dated January 5, 1959, at pp. 20, 24-25.

First: Denial of due process and equal protection of the laws in procedural matters, as above cited, in the District Court of Appeal;

Second: Denial of due process and equal protection in that Court in respect to each of the substantive matters cited;

Third: Misconduct of the District Court of Appeal in delivering a deliberately false and misleading opinion;

Fourth: The need for action on the part of this Court in delivering an opinion prescribing minimum standards for judicial opinions to be observed in the District Courts of Appeal for protection of the rights of litigants, and to enable this Court to appropriately exercise its power of review;

Fifth: To enforce compliance with the decision of this Court in *Estate of Sutro*, 155 Cal. 727, with the rule in the *Bishop of Durham* case, binding as a precedent under Section 22.2 of the Civil Code, and with the provisions of Article XX, Section 9, of the State Constitution;

[38] *Sixth:* To resolve and settle the conflict existing between the decision and action of the District Court of Appeal in the within case, and the decisions in other Districts cited at page 16 of this Petition;

Seventh: To decide the substantial legal issues cited at pages 16-17 of this Petition;

Eighth: To lay down standards governing interpretation of wills in cases involving alleged charitable trusts, to prevent the abuse of power which has occurred in the case at bar;

Ninth: To re-examine this Court's decision in *Collier v. Lindley*, 203 Cal. 641, for the purposes set forth at page 18 of this Petition;

Tenth: To deliver an opinion in respect to the legal limitations on the presumption favoring attempted gifts to

charity to the end that there may be no confusion respecting the standards to be applied in those situations;

Eleventh: To enforce the public policy declared in the perpetuity clause of the State Constitution (Article XX, Sec. 9), according to its intent and purpose, under which decedent's trust is void in its entirety;

Twelfth: And, finally, to secure to these Appellants their constitutional right to a full and complete exercise of appellate jurisdiction, a truthful opinion based on the law and the record, and a reversal of the decrees of the trial court, as the law requires.

[39] We respectfully submit that this petition should be granted on each of the grounds stated, and that the vote in its favor should be unanimous.

Dated, San Francisco, California,
March 25, 1959.

AARON M. SARGENT,
Attorney for Appellants and Petitioners.

DOYLE & CLECAK:
Of Counsel.

Order Due April 17, 1959

ORDER DENYING HEARING

After Judgment by District Court of Appeal
1st District, Division 2, Civil No. 18130

In the Supreme Court of the State of California
IN BANK

Estate of Peck, Deceased
Sargent et al

v.

The Board of Trustees of the
Leland Stanford Junior University
Spence, J. did not participate herein

Appellants' petition for hearing DENIED.

Gibson *Chief Justice*

Filed Apr. 15, 1959

WILLIAM L. SULLIVAN, *Clerk* By R. J. BELL, *S. F. Deputy*

FILE COPY

FILED
AUG 6 1959
JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GLORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FEINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

On Petition for Writs of Certiorari to the Supreme Court of the State of California to the District Court of Appeal, First Appellate District, and to the Superior Court in and for the City and County of San Francisco

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In the Supreme Court of the United States

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In the Matter of the Estate of
JANET M. PECK,
Deceased,

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,
Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,
Respondent.

On Petition for Writs of Certiorari to the Supreme Court of the State of California, to the District Court of Appeal, First Appellate District, and to the Superior Court in and for the City and County of San Francisco

Brief for Respondent in Opposition

OPINION BELOW

The opinion of the District Court of Appeal of the State of California, First Appellate District, Division Two is reported at 168 Adv. Cal. App. 28, 335 P.2d 185. The opinion is printed in the Appendix to the petition herein.

JURISDICTION

Petitioners seek to invoke the jurisdiction of this Court under 28 U.S.C. 1257(3).

STATUTE INVOLVED

Section 1257(3) of the Judicial Code (28 U.S.C. 1257(3)) provides:

> "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:
>
> * * * * * * *
>
> "(3) By writ of certiorari, * * * where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of * * * the United States."

QUESTIONS PRESENTED

The court below construed the will of Janet Peck and held that the purposes of the trust provided for in the will were intended by the testatrix to be exclusively charitable and that the trust was a valid charitable trust. Only two questions are presented by the arguments of petitioners.

1. Does the determination of the validity of a trust created by a will present a federal question so that the judgment of the state court is reviewable by this Court?

2. Will this Court review unsupported allegations of irregularities by the state court in litigation relating to the construction of a will?

STATEMENT

This case involves the validity of a testamentary trust. Janet Peck by her will left her entire estate to The Trustees of The Leland Stanford Junior University, in trust, for certain educational purposes.

Petitioners, who are children of deceased persons who were first cousins of the testatrix,* filed a petition for preliminary distribution and for determination of heirship claiming that the trust provided in the will had non-charitable purposes, was therefore invalid as a perpetuity, that an intestacy resulted and that they were entitled to distribution of the estate. The executor filed a petition for preliminary distribution of a portion of the estate to the Stanford Trustees upon the trusts set forth in the will.

After a full hearing, the Superior Court construed the will and found that the testatrix intended that her entire estate be used exclusively for charitable purposes and concluded that a valid charitable trust was created. The court distributed to the respondent the portion of the estate which was the subject of the executor's petition, in trust, for the educational purposes provided in the will.

By its decision herein the District Court of Appeal affirmed the decree below. As stated in the petition, "The Justices had the benefit of a full presentation in the briefs and on oral argument" (Pet. 21). Prior to the oral argument

*Although the point is immaterial in this proceeding, respondent cannot agree with petitioners' contention that they are the legal heirs of the testatrix (Pet. 28). In view of the conclusion of the state court that the trust was valid, the state court did not find it necessary to determine who would be entitled to receive the entire estate if the trust were held invalid. Edmund More, Jr. was the closest surviving relative of the testatrix at the date of her death (Opinion, Pet. App. ii), and he, rather than the petitioners, is the person who would be entitled to take any intestate property. California Probate Code, Sec. 226. As pointed out in respondent's brief filed with the District Court of Appeal (R. Item 4, pp. 35-38), there is no merit in petitioners' claim that the interest of Mr. More was transferred to them. The instrument prepared by petitioner Aaron M. Sargent under which he claims an assignment to him of one-half of Mr. More's interest was not and did not purport to be a present assignment (R. Item 2, Cl. Tr. 18-20). The instrument of relinquishment relied on by petitioners was not signed by Mr. More but was prepared and executed by Mr. Sargent as the purported attorney for Mr. More some twenty days after Mr. More had revoked and rescinded the power of attorney he had given to Mr. Sargent (R. Item 2, Cl. Tr. 27; Stanf. Ex. A).

petitioner Aaron M. Sargent attempted to disqualify one of the Justices of the District Court of Appeal alleging bias and prejudice on the part of the Justice against Mr. Sargent and alleging that the Justice was prejudiced in favor of "communists and communistic activity" (R. Item 7). The matter of the claimed disqualification was heard in accordance with the applicable statute (Calif. Code of Civil Procedure, Sec. 170) by the Presiding Justice of the Third District Court of Appeal who found that the alleged existing bias and prejudice did not exist and who held that the Justice was fully qualified to sit and act (R. Item 12).

The question presented to the District Court of Appeal was whether the perpetual trust created by the will was valid under California law. That question turned upon the construction of the will itself and the application of state law thereto. In upholding the validity of the trust as a trust exclusively for charitable purposes the court stated that there was no merit in the petitioners' position. Two justices* of the District Court of Appeal concurred in the judgment as required by state law (California Constitution, Art. VI, Sec. 4a).

A petition for rehearing was denied by the District Court of Appeal and the Supreme Court of the State of California denied a petition for hearing in that court, Justice Spence not participating.†

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*The justice who sought to be disqualified did not sign the opinion.

†Rule 28(c) of Rules on Appeal adopted by the Judicial Council of the State of California provides, in part, as follows: "A hearing in the Supreme Court after decision in the District Court of Appeal, may be granted by an order, signed by at least 4 justices assenting thereto, and filed with the clerk. The denial of a hearing may be evidenced by an order signed by the Chief Justice and filed with the clerk." Mr. Justice Spence, one of the seven justices of the California Supreme Court, is a trustee of Stanford University, and therefore did not participate in the consideration of the petition for hearing in that court. No justice of the California Supreme Court voted for a hearing. (Pet. Sep. App. 42)

ARGUMENT

This case presents a simple issue of the construction of the will of Janet Peck by which she left her estate to The Trustees of The Leland Stanford Junior University under a trust for described educational purposes. The trial court and the District Court of Appeal through application of principles of law long established in the California courts found the trust purposes to be exclusively charitable and accordingly upheld the validity of the trust and the distribution of the estate in accordance with the wishes declared in Miss Peck's will. All contentions of the petitioners on the merits were fully presented to the District Court of Appeal and again to the California Supreme Court in a petition for hearing in that court.

The construction of a will and the validity of a charitable bequest are matters of state law, and the judgment of the District Court of Appeal interpreting this will presented no federal question whatsoever. The decision construing the will is manifestly correct, but even if it were erroneous there is no federal question requiring decision by this Court.

Having consistently lost in the state courts petitioners now seek to obtain a further review by the assertion of totally groundless charges against the judges of the state appellate courts. The irresponsible conduct of petitioners cannot create federal constitutional questions where none exist.

I.

The Construction of the Will Presents No Federal Question.

The state court has not decided any federal question, however insubstantial. The construction of a will is solely a matter of the local law of the domicile. 4 Page on Wills, p. 587. It seems almost too obvious for argument that a determination of the intentions of a particular testatrix and

of the extent to which the state will permit those intentions to be carried out must be made upon the basis of the facts and of the law of the state of domicile.

Under the law of the State of California, the purposes of the trust created by the testatrix were to be ascertained from the testatrix's intention as expressed in the will. The District Court of Appeal considered the relevant language of the will, determined the purposes for which the testatrix intended the trust property to be used, concluded that "the will restricts the use of trust property solely to charitable purposes" (Opinion, Pet. App. vi) and held that the trust was a valid charitable trust under the law of California. This decision of the state court therefore presented no federal question whatsoever. It was based solely on a proper application of state law.

The resolution of a controversy of this nature is in no way dependent upon the Constitution of the United States, its treaties or its statutes and all of the issues must be decided upon the basis of the applicable state laws. There is therefore no function of review for this Court to perform. This Court has long recognized this principle, and it is signficant that petitioners have not cited a single case in which this Court has granted certiorari to review a judgment construing a will pursuant to the provisions of Section 1257(3) of the Judicial Code.

II.

The Decision of the State Court on Questions of State Law Does Not Constitute a Denial of Due Process Nor of Equal Protection of the Laws Even if the Decision Were Erroneous.

Petitioners' contention that they have been denied due process and equal protection of the laws is in substance only an argument that the case should have been decided in

their favor by the state courts. Petitioners had a full hearing in two state courts wherein they unsuccessfully urged the adoption of the construction which they seek to have placed on the words of the will. Petitioners' arguments were also fully presented to the State Supreme Court in a petition for hearing which was denied. The decision of the state court is demonstrably correct, but even if it were erroneous, this Court would have no jurisdiction to review the decision, for it has long been established that an erroneous decision given by a state court in the regular course of judicial proceedings does not deprive the unsuccessful party of property without due process of law. *Nebletter v. Carpenter*, 305 U.S. 297 (1938); *Sexton v. Barry*, 233 F.2d 220, 224 (6 Cir. 1956), cert. den. 352 U.S. 870 (1956).

As stated by this Court in *American Railway Express Co. v. Kentucky*, 273 U.S. 269, 272, 273 (1927):

> "Save in exceptional circumstances not now present we must accept as controlling the decision of the state courts upon questions of local law, both statutory and common. 'The due process clause does not take up the laws of the several States and make all questions pertaining to them constitutional questions, nor does it enable this court to revise the decisions of the state courts upon questions of state law.' *Enterprise Irrigation Dist. v. Farmers Mutual Canal Co.*, 243 U.S. 157, 165, 166.
>
> * * * * * * *
>
> "We cannot interfere unless the judgment amounts to mere arbitrary or capricious exercise of power or is in clear conflict with those fundamental 'principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights.'"

The record in this case reflects a complete, full and fair hearing and there is nothing therein to support a charge that the state court judgment amounts to mere arbitrary or

capricious exercise of power or is in conflict with fundamental principles of jurisprudence.

III.

The Allegations of Judicial Misconduct or Irregularity Are a Mere Sham and Afford No Basis for Jurisdiction in This Court.

The irresponsible charges made by the petitioners that the California District Court of Appeal has rendered a "fraudulent opinion" containing "deliberately false statements of fact and law" and "half-truths" and that the court has "suppressed material facts" are made without any basis whatsoever either in or outside the record.

These charges are but a repetition of the unprofessional and improper conduct which has characterized petitioners' presentation in this case. Petitioners directed similar arguments to the California Supreme Court in their efforts to obtain a reversal of the decision of the District Court of Appeal and even attempted, unsuccessfully, to bring before the California Supreme Court as "Additional Evidence" in this case the record of certain cases involving bribery, collusion and fraud on the part of the judiciary. The record herein contains not the slightest shred of evidence of any judicial misconduct and these charges are in reality nothing more than a contention in the most disrespectful and improper terms that the California courts have misinterpreted the will and have rendered a decision that conflicts with prior decisions of the California courts.

It is obvious that this intemperate and groundless attack upon the state court is an attempt born of desperation to present a constitutional question in order to obtain a review in this Court of questions of state law that otherwise could not be brought before this Court. Such a transparent pretext should not be allowed to succeed. *United Society Company v. American Fruit Product Company*, 238 U.S. 140 (1915); *Goodrich v. Ferris*, 214 U.S. 71 (1909).

Petitioners' dissatisfaction with the decision of the state court does not justify or excuse their conduct nor does it add substance to the assertion of a due process issue. Any allegation of a constitutional issue in this case is clearly devoid of merit and frivolous.

IV.

Petitioners State No Adequate Reasons for Allowing a Writ of Certiorari.

Petitioners list seven so-called "Points" as reasons for granting certiorari (Pet. 23-28) but these are totally without merit. For the most part these "reasons" amount to nothing more than baseless aspersions upon the state court and charges that the court has misconstrued the will. We have shown in Section II of this brief that even if the construction of the will adopted by the state court were erroneous, the decision did not deprive the petitioners of any constitutional rights.

We desire to comment further on two of the "reasons" urged by Petitioners.

In Point 3 it is contended that the state courts "resorted to a general presumption in favor of Respondent as an alleged charity"* and that this constituted "a denial of both due process and equal protection".

*This charge apparently arises from the following statements in the opinion of the District Court of Appeal:

> "We start with several fundamental principles of the law. * * * Second, courts look with favor upon all attempted charitable bequests and there is no authority to construe a charitable bequest as legally void if it can possibly be made good. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor. (*Estate of Quinn*, 156 Cal. App. 2d 684 (320 P.2d 219); *Estate of Tarrant*, 38 Cal. 2d 42 (237 P.2d 505, 28 A.L.R. 2d 419); *Estate of Bunn*, 33 Cal. 2d 897 (206 P.2d 635); *Collier v. Lindley*, 203 Cal. 641 (266 P.526); *Estate of Hinckley*, 58 Cal. 457.)" (Pet. App. iv

The statement in the opinion which the petitioners criticize is merely an ordinary and widely observed rule of constructional preference. To whatever extent the rule is applicable, it is a rule in favor of the attempted charitable bequest, not, as petitioners claim, in favor of respondent who happened to be named as trustee. If the will were ambiguous as to the nature of the trust purposes, the rule would have been applicable whether the designated trustee was a bank, an individual, or, as in the present case, the governing body of an educational institution.

Respondent contended before the District Court of Appeal that the only reasonable construction to be given the words of the will was that the testatrix intended that the trust property be used exclusively for charitable purposes, but that if there were any ambiguity as to whether the purposes of the trust were exclusively charitable, that ambiguity should be resolved in favor of the charitable bequest (R. Item 4, pp. 19-20).

It is readily apparent from the opinion that the state court found no ambiguity in the trust provisions of the will and therefore no necessity to resort to the above mentioned rule. The court stated that "any reasonable construction of the language used by the testatrix indicates that the testatrix desired to contribute toward world peace by providing education for newspapermen" (Opinion, Pet. App. iv) and that "In the instant case, the will restricts the use of trust property solely to charitable purposes" (Opinion, Pet. App. vi).

Moreover, this rule of constructional preference is in accordance with principles laid down by this Court. In *Russell v. Allen*, 107 U.S. 163, 167 (1882) this Court stated with reference to trusts for charitable purposes that

> "* * * the instruments creating them should be so construed as to give them effect if possible * * *"

Petitioners' contention that the state court's reference to this rule of construction constitutes a denial of due process and of equal protection of the laws is wholly untenable and raises no constitutional issue reviewable by this Court.

The charge in Point 4 that the decision of the state court amounts to an exercise of legislative power is likewise unfounded. The state court exercising its judicial power interpreted the will under state law as one creating a trust exclusively for charitable purposes. As such the trust was valid under state law notwithstanding that it was to have perpetual existence. California Constitution, Article XX, Sec. 9; *Estate of Hinckley*, 58 Cal. 457, 473 (1881). Petitioners' allegation that the state court exercised legislative power is not supported by the facts of this case.

Notwithstanding petitioners' contention to the contrary, it is obvious from the opinion of the District Court of Appeal that the decision of the state court is based upon a thoughtful consideration of the provisions of the will and upon principles of law applicable to charitable trusts well established in the California courts. The decision below turned upon the construction to be accorded to the words of a particular will. That decision established no novel or important principle of law and no question of great public interest was at stake. In upholding the validity of the testamentary trust as a trust for charitable purposes, the state court adopted the only reasonable construction that could be given to the provisions of the will. We submit that petitioners have not stated any adequate reason for a further review in this Court.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the petition for writs of certiorari should be denied.

Dated: August 3, 1959.

Respectfully submitted,

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of
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Petitioners' Reply Brief

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SUMMARY OF ARGUMENT

In compliance with Rule 40(f), Petitioners submit the following outline:

The Issues. Questions other than the interpretation of a will or validity of a trust are involved. The Federal questions arise from unconstitutional administration of State laws, discrimination in their application, and an unwarranted exercise of legislative power by the State judiciary.

Federal Questions.

(1) False interpretation of a will;
(2) Misrepresentation of other facts of record;
(3) Refusal to enforce statutes of interpretation;
(4) Refusal to enforce laws invalidating a trust;
(5) Unconstitutional administration of such laws;
(6) Resort to a presumption prohibited by law and the will;
(7) Arbitrary discrimination without a factual basis;
(8) Denial of procedural due process on appeal;
(9) Exercise of legislative power beyond authority of State judiciary.

Misrepresentations. In six instances of major importance, the contents of the will and of the record are misrepresented and falsely stated. A true interpretation of the will discloses authority to engage in discretionary non-charitable activities—a situation invalidating the trust.

Non-enforcement of Statutes. Decisions in other cases reveal that the statutes controlling interpretation were strictly enforced there, and not here. The same situation exists as to the laws invalidating the trust.

Illegal Presumption. The Judgment is actually based on a presumption prohibited by the statutes and is therefore the result of an unlawful act, equivalent to the receipt of

illegal evidence. It is also the product of an arbitrary presumption in favor of one party and against others.

Exercise of Legislative Power. The State Constitution provides for a separation of powers, and the judiciary is without authority to change laws of inheritance. The judgment here is therefore invalid to the same extent as in cases where Departments of the Federal Government have been held without authority to make laws or otherwise act outside their jurisdiction.

Defense of Property Rights. Under the Constitution, property rights of all kinds are entitled to equal protection and enforcement. There is presently a need for a decision of this Court defining constitutional rights in reference to civil actions.

Enforcement Procedures. Rule 19 was not intended to cover all types of cases. There is certiorari jurisdiction to enforce compliance with the Constitution, regardless of the presence or absence of unusual, important, or unsettled questions of law. That power has been exercised in many cases.

Summary Relief. There is also power to issue a writ and grant summary relief, as has been done in other matters.

Due Process on Appeal. The due process clause applies to the proceedings of the appellate courts of a state, as well as to the trial courts.

Motion for Disqualification. Petitioners were justified in seeking disqualification of one of the Associate Justices of the District Court of Appeal, and his failure to participate herein and take an active part in the proceedings, after denial of the motion, amounted to a denial of due process.

Equal Protection on Certiorari. The due process clause of the Fifth Amendment includes equal protection, and it applies to the Federal judiciary. The exercise of certiorari jurisdiction is subject to this requirement.

Additional Questions Involved. The distinction, if any, between criminal and civil cases, in respect to due process and equal protection; Refusal to enforce laws as a denial of constitutional rights; State exercise of judicial power as an unconstitutional act.

Additional Reasons for Writs. Effect of the judgment here on Federal Revenue Laws, particularly the Federal estate tax; Correction of the error in the dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21, in respect to possible limitation on scope of the Fourteenth Amendment.

ARGUMENT

This brief is filed pursuant to Rule 24(4) as a jurisdictional statement and in reply to the objections raised by Respondent on that limited ground. The merits will be discussed to the extent required to show that the questions presented are Federal and substantial. Unless otherwise stated, all italics and other emphasis used herein is ours.

STATEMENT OF THE ISSUES

Respondent questions the jurisdiction, asserting (1) that the judgment is based on the interpretation of a will; and (2) that the validity of the trust depends on State or "local" law. This is a clever, but evasive, analysis. A great deal more is involved.

There was no "*interpretation*" of the will in the legal sense. False statements and half truths were substituted for legal analysis. This conduct was deliberate. There was misrepresentation as to the content of the record; refusal to enforce the statutes controlling interpretation; an unconstitutional administration of those laws; resort to inadmissible evidence in determining the intent of decedent; unequal enforcement of the laws governing rights of inheritance; an arbitrary discrimination in favor of Respondent; denial of due process on appeal; and an exercise of legislative power beyond the authority of the judiciary — an act equivalent to usurpation.

The Fourteenth Amendment was adopted to put an end to just such practices as these.[1] That was the basis of this Court's order in *Shuttlesworth v. Birmingham Board of Education*, No. 344, Oct. Term, 1958, CCH p. 92[2] upholding

1. See Appendix to Opinion of Justice Black in *Adamson v. California*, 332 U.S. 46 at 92 et seq.

2. Commerce Clearing House Inc. United States Supreme Court Bulletin, Nov. 24 1958 page 92. *Note*: This publication will be here

the *Alabama Pupil Placement Law* pending an exercise of *further jurisdiction*, viz:

> "*Per Curiam:* The motion to affirm is granted and the judgment is affirmed upon the limited grounds on which the District Court rested its decision. 162 F. Supp. 372, 384."

The District Court opinion so approved had the following proviso:

> "All that has been said in this present opinion must be limited to the constitutionality of the law *upon its face*. The School Placement Law furnishes the legal machinery for an orderly administration of the public schools in a constitutional manner * * *. We *presume that it will be so administered*. If not, in some future proceeding it is possible that it may be declared *unconstitutional in its application*." (*Shuttlesworth v. Birmingham Board of Education*; 162 F. Supp. 384)

See opinion of Chief Judge Parker in *Carson v. Warlick*, 238 F.2d 724, sustaining the North Carolina Pupil Enrollment Act on the same ground.

In *Lassiter v. Northampton County Board of Elections*, No. 584 Oct. Term 1958 (CCH p. 1523), this Court upheld a voters' literacy test as valid on its face. Jurisdiction was again reserved to determine whether inequality in fact might result from its administration. The following comment appears therein:

> "If they (whites) were allowed to vote without taking a literacy test and if appellant (a Negro) were denied the right to vote unless she passed it, members of the white race would receive preferential privileges on the ballot contrary to the command of the Fifteenth Amendment. That would be analagous to the problem posed in the classic case of *Yick Wo v. Hopkins*, 118 US 356, where an ordinance unimpeachable on its face was applied in such a way as to violate the guarantee of equal protection contained in the Fourteenth Amend-

ment. But this issue of discrimination in the actual operation of the ballot laws * * * has not been framed * * *. So we do not reach it. But we mention it in passing so that it may be clear that nothing we say or do here will prejudice appellant in tendering that issue in the federal proceedings which await the termination of this state court litigation * * *.

"Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No such influence is charged here."

It is clear from these cases that the unequal administration of a valid law is a denial of due process. The test in all these situations is the *result*; not the means by which it is accomplished. In the Pupil Placement cases the rights asserted are as *individuals*—not as members of a particular class or group (*Carson v. Warlick*, 238 F.2d 729).[3] It follows that these opinions are also valid authority in situations where the persons involved have no such group affiliation.

It is a denial of due process for a District Attorney to use perjured evidence with knowledge of its falsity (*Napue v. Illinois*, No. 583 Oct. Term 1958; CCH p. 1657). The same rule must apply where the State acts through a *Court* instead of a prosecutor.

Falsification of an appeal record is a denial of due process (*Chessman v. Teets*, 354 U.S. 156). Judgments have been reversed on constitutional grounds where based on wire-tapping (*Benanti v. United States*, 355 U.S. 96); testimony given by a wife over the objection of defendant, her husband (*Hawkins v. United States*, No. 20 Oct. Term 1958,

3. "There is no question as to the right of these school children to be admitted to the schools of North Carolina without discrimination on the ground of race. They are admitted, however, as *individuals*, not as a class or group; and it is as *individuals* that their rights under the Constitution are asserted."

CCH p. 113); evidence obtained with a search warrant based on hearsay (*Giordenello v. United States*, 357 U.S. 480); and proof secured by illegal entry and arrest without a warrant (*Miller v. United States*, 357 U.S. 301). Federal officers have been enjoined from turning over to state authorities evidence obtained on an illegal federal search and seizure, and restrained from testifying in a state court in reference thereto (*Rea v. United States*, 350 U.S. 214).

These are criminal cases. However, the Fourteenth Amendment surrounds *property rights* with the same protection given to "*life*" and "*liberty*"—rights which normally are the subject of criminal proceedings. There is no valid basis for distinction between criminal and civil actions, or as between enforcement of rights in property and rights of the person. All rights of all persons are constitutionally secured.

The only difference between criminal and civil proceedings lies in the fact that in some cases the conduct complained of does not constitute the "*act* of the State." For example, it was held in *Thomson v. Butler*, 136 F.2d 644, at 647-648, that:

> "The due process clause of the Fourteenth Amendment is not a guarantee against the use or results of perjury or fraud by *parties to private litigation* in state courts, uncountenanced by the general standards and processes of the state court system. * * * The rule recognized in *Pyle v. State of Kansas*, 317 U.S. 213 * * * and other cases * * * has application only to public litigation in which authorities of the State, with responsibility for the litigation, have committed or countenanced a fraud or fundamental unfairness * * * which has entered into a deprivation of life, liberty or property by the State."

It seems clear that no such rule can apply in a civil action where the State acts through its judiciary in imposing such

consequences on one of the litigants. This constitutes "State action" within the meaning of the Fourteenth Amendment. It was so held in *Shelley v. Kraemer*, 334 U.S. 1.[4] The jury selection cases also rest on the proposition that State judicial action is the cause of the prohibited result.[5]

FEDERAL QUESTIONS PRESENTED

Due process and the equal protection of the laws have been here denied, by judicial action, in each of the following respects:

First: By a deliberately false and untruthful "interpretation" of decedent's will;

Second: By an untruthful opinion misrepresenting other essential facts, of record;

Third: By a refusal to enforce, and give full legal effect to, the statutes controlling the interpretation of this will;

Fourth: By a refusal to enforce, and give full legal effect to, the constitutional provision and statute under which decedent's trust is invalid;

Fifth: By an unconstitutional administration of these laws, contrary to the force and effect given thereto in other cases;

Sixth: By entry of a judgment based on inadmissible evidence in the form of a "presumption" contrary to the terms of the will;

4. "That the action of state courts and judicial officers in their official capacities is to be regarded as action of the State within the meaning of the Fourteenth Amendment, is a proposition which has long been established by decisions of this Court. That principle was given expression in the earliest cases involving the construction of the terms of the Fourteenth Amendment." Opinion of Chief Justice Vinson, 334 U.S. 14.

5. *Hernandez v. Texas*, 347 U.S. 475; *Williams v. Georgia*, 349 U.S. 375; *Reece v. Georgia*, 350 U.S. 85; *Hoyt v. Louisiana*, 350 U.S. 91, 104; and *Eubanks v. Louisiana*, 356 U.S. 584.

Seventh: By exercise of an arbitrary and discriminatory presumption in favor of Respondent;

Eighth: By conduct amounting to a denial of due process and equal protection on appeal;

Ninth: By an attempt to exercise legislative power beyond the authority of the State Judiciary.

Falsehoods of Major Importance.

There are six false representations bearing directly on the validity of the judgment—a fact that is clear from the following analysis:

THE OPINION	THE TRUTH
1. Prohibition. "In the instant case, the will restricts the use of trust property solely to charitable purposes." (Op. vi: 4-5.)	**No prohibition.** There is no clause or term imposing any such restriction.
2. Single purpose. It is represented that the trust has only **one** purpose—"to contribute toward world peace by providing education for newspapermen." (Op. iv: 17-20.)	**Multiple purposes.** The plural form in the words "conditions" and "purposes" requires the interpretation that there are **several** purposes and more than one condition to be remedied.[6]
3. Educational purpose. "Such a purpose is fundamentally educational. It has long been the law in this state, that a trust for educational purposes is a trust for charitable purposes." (Op. iv: 19-22.)	**Not specified.** There is no clause requiring that **educational** means be used either in whole or in part. Non-educational activity is permitted.

[6]. The implementing clause of the will at 4-19-26 reads as follows: "I have therefore long cherished the hope that I might be able to *do something* to help toward the correction of *these conditions*, and to that end I hereby give and bequeath * * * all of my estate and property * * * *in trust* for the *foregoing purposes* * * *."

4. For a professorship.

"If the trust income is insufficient, the trustees **are to establish** a professorship." (Op. vi: 11-15.)

Not required.

Precatory words used in this clause disclose an intent to impose no legally binding obligation.[7]

5. Bequest to Stanford.

"The testatrix intended to make a bequest to the governing body of Stanford University." (Op. vii: 18-20.)

Not for the University.

The will contains no clause requiring the trust to be administered for benefit of the University or any department thereof. The Foundation **may** be set up in another State or place; operated **independently** of the University.[8]

7. See Will 6:26-7:5. "In the administration of said Foundation if the net income derived from said trust property and available for the aforesaid purposes, is ever sufficient to make such course possible, it is my *hope* and *expectation* that my said Trustees *will establish* a full-time *professorship* hereunder."

8. Throughout the will decedent refers to the trustees as "*my* said Trustees". There are twelve such references indicating that the persons acting shall be trustees for her benefit and *not for the use or benefit of Stanford*. The express purpose of the trust is to *establish* a Foundation and *maintain* it with income from residue of the estate (Will: 5:2-5). The Foundation may be established at any place or places. It is not legally necessary that the university be in any way connected with it. The will shows that decedent had in mind the possibility that successor trustees might be appointed to carry it out. See Will: 8:10-17:

> "It must be understood that the above respective incomes to the respective individuals herein named, are to be paid in full and without fail, and *if* my said Trustees *and/or* said The Leland Stanford Junior University accept the gift for said Foundation of World Relations, hereinabove provided for, *they* must do so subject to such charge on both the corpus of said trust estate and all income derived therefrom."

6. Charitable status.

"* * * under the terms of the founding grant, which is made applicable to all bequests to the Stanford Trustees by section 10 of article IX of the State Constitution, the Stanford Trustees are prohibited from using the income and profits of the trust for any private purposes." (Op. vi: 14-19.)

Non-charitable powers.

The Stanford Board is a corporate body with both charitable and non-charitable powers. It has acted in both capacities at various times. It has power to function on a non-charitable basis in reference to this trust.[9]

The True Situation.

1. By a failure to prohibit non-charitable activity, the testatrix authorized her Trustees to enter this field.

2. By a failure to instruct or require them to employ *educational means*, she authorized activities both educational and non-educational, thus conferring a discretionary power of selection.

3. It appears on the face of the will that *express* powers were relied on in respect to administration of the corpus of the trust fund set aside for maintenance, and that *implied* powers were to be used by the Foundation in the execution of the trust purposes.[10]

9. Corporate powers are conferred by Education Code Secs. 21301-21303. On October 17, 1946, Respondent incorporated an affiliate, "Stanford Research Institute", to conduct industrial research on a fee contract basis, and it has engaged in this non-charitable business ever since. See Footnotes 8-10, at page 16 of the Petition for other data regarding non-charitable powers and activities of the Stanford Board. There is power to incorporate and operate decedent's Foundation on the same basis.

10. The express powers conferred in respect to administration of trust funds include: Right to postpone expenditures; to invest in securities, land, real estate mortgages; power to sell, assign and convey; authority to retain a specific block of stock for an indefinite term. See Will 5:6-6:17. There is no provision indicating the means to be used in carrying out the trust purposes. Unless there is broad implied power—there is *no* power, in which case the trust would fail for uncertainty.

4. In addition, there is a broad grant of general power to do *anything* likely to correct *any* of the conditions mentioned in the preamble.[11]

The Foundation to be perpetually maintained with estate income will have charter purposes capable of being carried out by either educational or non-educational, charitable or non-charitable, means. The molding of public opinion may be attempted by entering the television and radio broadcasting field, with commercial sponsorship. The knowledge of our citizens in regard to foreign affairs may be increased by publishing a magazine, newspaper, or information bulletin to a list of paid subscribers. Research may be conducted on a fee contract basis for the benefit of publishers of educational materials by an arrangement similar to that now used by Respondent in the case of Stanford Research Institute. These are only a few of the possibilities. The Foundation will have discretionary power to engage in any of them.

An outline of the true legal interpretation of this will is set forth in the appendix.

Refusal to Enforce Statutes Controlling Interpretation.

The statutes which control here are the Probate Code Sections cited at page 9 of the Petition.

Section 50 requires all wills to be in writing.

Under Section 100, the Code applies to all wills affecting property within the State.

Section 105 restricts the determination of intent to the

11. Will 4:19-22 "I have therefore long cherished the hope that I might be able *to do something* to help toward the correction of these conditions, and to that end I hereby give * * *"

words of a will. It prohibits resort to extrinsic evidence except where the words used are ambiguous or uncertain as to meaning.[12]

Under Section 102, meaning and some effect must be given to all of the words in the will.

Section 106 requires that the words be taken in their ordinary and grammatical sense; that technical words be given technical meaning.

These rules have been strictly enforced in other cases. We cite the following as examples:

Estate of Young, 123 Cal. 337, 344; 55 P. 1011; intention to be sought for is not what existed in the mind of testator "but that which is expressed in the language of the will."

Estate of Lyons, 36 Cal. App. 2d 92; 96 P.2d 1018; there can be no reformation of a will on the ground of accident or mistake.

Pearson v. Hansen, 96 Cal. App. 2d 394; 215 P.2d 529; if the language of a will is clear, the intent as shown by such language must be carried out, regardless of how unusual or unreasonable the result may appear to be.

See also cases cited in the footnote.[13]

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12. Sec. 105: "* * * when an uncertainty arises *upon the face of a will*, as to the application of any of its provisions, the testator's intention is to be ascertained *from the words of the will*, taking into view the circumstances under which it was made, * * *."

13. *Estate of Northcutt*, 16 Cal. 2d 683, 688, 107 P.2d 607, 610; words of a will are to receive an interpretation which will give some effect to every expression rather than render certain parts inoperative; technical words are to be taken in a technical sense where the will was the work of a legal draftsman. *Estate of Bonra*, 25 Cal. App. 2d 590, 595, 73 P.2d 193, 196; words must be taken in their grammatical sense, and technical terms in their technical meaning where the draftsman was an attorney. *Estate of Walkerly*, 108 Cal.

The failure to enforce these statutory rules in like manner in the case at bar has deprived Petitioners of their property without due process, and denied them the equal protection of the laws.

Entry of a Judgment Based on Illegal Evidence.

A presumption, lawfully applied, is evidence to the same extent as any other form of proof.[14] The State court sought here to apply a presumption in Respondent's favor in disregard of the meaning of the words in the will and in violation of Probate Code Section 102:

> "The words of a will are to receive an interpretation which will give to every expression some effect, rather than one which will render any of the expressions inoperative; and of *two modes of interpreting* a will, that is to be preferred which will prevent a total intestacy."

There is no right to apply such presumption except where the words have *two* or more possible interpretations—one of which *may* result in an intestacy.

There is no provision authorizing a presumption in favor of "charity" as such. The only basis for "presuming" in its favor is that provided in Section 102. The words in the will must have at least two possible interpretations to justify resort to any presumption of any kind.

Here, the words are both clear and certain. Taken in their ordinary and grammatical sense, they disclose a trust for a mixture of charitable and non-charitable objects. Dis-

627, 41 P. 772; while it may be said of all wills that the testator's intent is to make a valid disposition, a court is not authorized on that ground to modify or vary the plain language, thus creating a new and valid will even though it might be certain that the testator would have adopted such interpretation had he known that his own attempt was invalid.

14. Code Civ. Proc. Secs. 1959, 1961, 1962, 1963.

regarding this factual situation, the Court resorted to a "presumption" on *general principles*.[15] Its conduct was unauthorized, and a violation of State law. The judgment is based on this kind of illegal evidence. A denial of due process and equal protection was the result.

In criminal cases it is settled that due process is denied by the receipt of illegal evidence.[16] The due process clause has the same meaning in the Fifth and Fourteenth Amendments. From the due process standpoint, there can be no difference between criminal and civil proceedings. It follows that the Court, in relying on illegal evidence in the form of an unauthorized "presumption", was party to a violation of constitutional rights.

Arbitrary Presumption in Favor of Respondent.

No State has power to establish or enforce a rule whereby one party to a civil action will be favored or preferred to the detriment of another. In such case, due process and equal protection are denied, regardless of whether the "rule" is one based on statute or a judicial interpretation of the "common law" (*Shelley v. Kraemer*, 334 U.S. 1, 17). The constitutional standards required in such a case are those enunciated in *Estate of Kline*, 138 Cal. App. 514, 519-520, 32 P.2d 677, cited at page 5 of the Petition. The

15. The opinion states that "* * * courts look with favor upon *all attempted charitable bequests* and there is no authority to construe a charitable bequest as legally void *if it can possibly be made good*. It is the policy of the law to favor gifts for charitable purposes and a will providing such gifts will be liberally construed to accomplish the intent of the donor." (Op. iv; 4-10.)

16. *Benanti v. United States*, 355 U.S. 96; *Hawkins v. United States*, No. 20, Oct. Term 1958, CCH p. 113; *Giordenello v. United States*, 357 U.S. 480; *Miller v. United States*, 357 U.S. 301. The use of prohibited evidence to deprive Petitioners of their property rights in a State court is similarly a violation of the Fourteenth Amendment.

failure to apply the minimum constitutional standards set forth in this opinion was a violation of the Fourteenth Amendment. Respondent is not above the law. It is subject to the same rules as other litigants. Its presence in this case confers no greater power on a court than the appearance of an individual having no power or influence. Under the Constitution, *all persons* are guaranteed due process and equal protection.

Refusal to Enforce Laws of Inheritance.

The constitutional and statutory rule against discretionary non-charitable powers is part of the laws of inheritance of the State of California. There is no right to inherit under a perpetual trust containing such a provision. It was the duty of the Court to enforce this law as in effect at date of death. It has been strictly and uniformly enforced in other cases.

See:

Estate of Sutro, 155 Cal. 727, 102 P. 920;
Estate of Vance, 118 Cal. App. 163, 4 P.2d 977;
Estate of Huebner, 127 Cal. App. 244, 15 P.2d 758;
Estate of Kline, 138 Cal. App. 514, 32 P.2d 677;
Estate of Peabody, 21 Cal. App. 2d 690, 70 P.2d 249.

Due process and equal protection were denied by a judicial failure to provide the same kind of enforcement in the case at bar.

Exercise of Legislative Power by Judiciary.

The Court sought to change the State law of inheritance invalidating these trusts by an attempt to exercise legislative power retroactively. The State judiciary has no such jurisdiction or authority. The modification, amendment or

repeal, of these laws is the sole prerogative of the Legislature.

See:

Estate of Ingram, 78 Cal. 586, 588; 21 P. 435;[17]

Estate of DeCigaran, 150 Cal. 682, 688; 89 P. 833, 836;

Estate of Kirby, 162 Cal. 91, 93-94; 121 P. 370;[18]

Maud v. Catheywood, 67 Cal. App. 2d 636, 643; 155 P. 111, 114.[19]

Article III, Sec. 1, of the State Constitution, provides for a complete separation of powers.[20] The unauthorized act of any department of government is unlawful and therefore a denial of due process. This Court has so ruled in many cases involving power and jurisdiction at the Federal level.

See:

Gigeou v. McElroy, No. 180, Oct. Term, 1958, CCH p. 1985; lack of authority by Executive Order or Act of Congress to sustain exercise of jurisdiction

17. It is vain to argue against the injustice of the rule, or to contend that in a case like the one at bar the children of a deceased sister ought to have a share in the estate * * *. Succession to estates is purely a matter of statutory regulation, which cannot be changed by the courts." (78 Cal. 588.)

18. Involves the question whether a person not convicted of murder of the decedent but held guilty of manslaughter could inherit. See 162 Cal. 94: "The right of inheritance in this state does not depend upon the ideas of court or counsel as to justice and natural right. The entire matter is in the control of the legislature and depends wholly upon the provisions of the statute, regardless of our notions of natural right and justice."

19. "* * * We must bow to legislative direction when we are told that if the descendants are not of equal degree of kindred 'they take by right of representation' * * *. 'Succession to estates is purely a matter of statutory regulation, which cannot be changed by courts.'"

20. "The powers of the government of the state of California shall be divided into *three separate departments*—the legislative, executive, and judicial; and no person charged with the exercise of powers properly belonging to one of these departments shall exercise any functions appertaining to either of the others * * *."

by the Office of Industrial Personnel Security Review and other agencies?

Taylor v. McElroy, No. 504, Oct. Term, 1958, CCH p. 2089; concerning same issue;

Duncan v. Kahanamoku, 327 U.S. 304; validity of martial law in Territory of Hawaii;

Granville-Smith v. Granville-Smith, 349 U.S. 1; want of jurisdiction in District Court of the Virgin Islands to grant a divorce under certain conditions.

Peters v. Hobby, 349 U.S. 331; action by Loyalty Review Board in excess of jurisdiction under Executive Order and held to be "an unwarranted assumption of power";

Reid v. Covert, 354 U.S. 1; want of authority to support court martial trial of civilian dependents accompanying members of the armed forces overseas in time of peace;

Harmon v. Brucker, 355 U.S. 579; want of authority in Secretary of the Army to issue "less than honorable" discharge based on conduct prior to induction in the armed forces;

Kent v. Dulles, 357 U.S. 116; unauthorized action of Secretary of State in denying passport because of alleged communist affiliation and past membership in Communist Party;

Dayton v. Dulles, 357 U.S. 144; same issue involving person having alleged association with members of the Rosenberg espionage ring;

Vitarelli v. Seaton, No. 101, Oct. Term, 1958, CCH p. 1330; reversing order of discharge of Interior Department employee.

In *Pennsylvania v. Nelson*, 350 U.S. 497, State action was set aside on jurisdictional grounds, it being held that Congress had preempted the field in Smith Act cases, thus

depriving the States of authority. *Sweezy v. New Hampshire*, 354 U.S. 234, questioned the authority of an investigation alleged to have been sponsored by the New Hampshire State Legislature. In *Youngstown Sheet and Tube Co., et al. v. Sawyer*, 343 U.S. 579, the Legislative Act of the President in directing seizure of the steel mills was held unconstitutional.[21]

The exercise of legislative power by the Judiciary is subject to the same prohibition and must on like grounds be held a denial of due process. This is the law at the Federal and also at the State level. There is no power in the Judiciary to alter it in any respect.[22] It follows that the attempt to so legislate as to confer inheritance rights on Respondent Stanford was a violation of the Fourteenth Amendment. The retroactive feature of this judicial legislation is, in itself, an infringement of basic rights.

Constitutional Protection for Property Rights.

A study of the opinions rendered from Volume 346, United States Reports, to date, indicates that the following are the only cases during that time dealing with pro

21. Steel Seizure Cases: Majority opinion by Justice Black: "The Constitution limits his (the President's) functions in the lawmaking process to the recommending of laws he thinks wise and the vetoing of laws he thinks bad. And the Constitution is neither silent nor equivocal about who shall make laws which the President is to execute." 343 U.S. 587. Justice Frankfurter: "The Framers, however, did not make the judiciary the overseer of our government. They were familiar with the revisory functions entrusted to judges in a few of the States and refused to lodge such powers in this Court." 343 U.S. 594. Justice Douglas: " 'The doctrine of the separation of powers was adopted by the Convention of 1787, not to promote efficiency but to preclude the exercise of arbitrary power.' *Myers v. United States*, 272 U.S. 52, 293." (343 U.S. 629)

22. *Ullmann v. United States*, 350 U.S. 422, 428: "Nothing new can be put into the Constitution except through the amendatory process. Nothing old can be taken out without the same process."

tection of property or property rights under the Fifth or Fourteenth Amendments:

Brown v. Board of Education, 347 U.S. 483, 493, involving future earnings possible with improved educational facilities:[23]

Bolling v. Sharpe, 347 U.S. 497—same issue in respect to District of Columbia;

Barsky v. Board of Regents, 347 U.S. 442—right to practice medicine;

Schware v. Board of Bar Examiners, 353 U.S. 232—right to practice law;

Konigsberg v. State Bar, 353 U.S. 252—practice of law;

Shelley v. Kraemer, 334 U.S. 1—right to own and occupy real estate;

Speiser v. Randall, 357 U.S. 513—veterans' right to tax exemption;

First Unitarian Church v. Los Angeles, 357 U.S. 545—tax exemption rights of a church;

Greene v. McElroy, No. 180 Oct. Term 1958, June 29, 1959 (CCH p. 1985)—loss of increased earnings available but for denial of security clearance in defense industry;

Taylor v. McElroy, No. 504 Oct. Term 1958, June 29, 1959 (CCH p. 2089)—earnings lost in defense industry for want of clearance;

Cole v. Young, 351 U.S. 536—employee of Federal Department of Health, Education, and Welfare;

Peters v. Hobby, 349 U.S. 331—earnings of employee in Federal Security Agency;

23. "Today (education) is a principal instrument in awakening the child to cultural values, in *preparing him for later professional training* * * *. In these days, it is doubtful that any child may reasonably be expected to succeed in life if he is denied the opportunity of an education." (347 U.S. 493)

Vitarelli v. Seaton, No. 101 Oct. Term 1958, June 1, 1959 (CCH p. 1319)—earnings of Department of Interior employee;

Slochower v. Board of Education, 350 U.S. 551—earnings of associate professor at Brooklyn College, maintained by City of New York;

Beilan v. Board of Education, 357 U.S. 399—teacher in Philadelphia public schools;

Lerner v. Casey, 357 U.S. 468—subway conductor employed by New York City Transit Authority.

Memorandum opinions and orders to reverse or affirm are not included in this analysis, there being no way to determine the basis for those rulings. The lack of Property Rights decisions in other areas indicates the need for an exercise of certiorari jurisdiction in the pending matter.

Certiorari to Enforce Constitutional Rights.

Rule 19 was not intended to cover or indicate all types of cases within the certiorari jurisdiction under 28 U.S.C.A. Sections 1254 and 1257. There are many cases arising under those jurisdictional provisions where the duty to enforce is clear, and writs have issued in the absence of unusual, important or unsettled questions of law. We cite the following as examples:

Dickinson v. United States, 346 U.S. 389—review of evidence on denial of exemption from military service of person claiming status as a minister of the gospel;

Leyra v. Denno, 347 U.S. 556—whether evidence disclosed that a confession was obtained under duress;

Williams v. Georgia, 349 U.S. 375—whether evidence showed that a negro had been validly deprived of

his right to object to the composition of a jury panel;

Herman v. Claudy, 350 U.S. 116—whether a plea of guilty was obtained under duress;

Fikes v. Alabama, 352 U.S. 191—whether confessions of a negro were obtained under duress;

Delli Paoli v. United States, 362 U.S. 232—effect of the introduction of testimony of certain conspirators on the right of other defendants to a fair trial;

Blackburn v. Alabama, 354 U.S. 393—remand to lower court with instructions to determine whether confession was obtained under duress;

Mallory v. United States, 354 U.S. 449—validity of confession in view of length of time covered by detention;

Rowoldt v. Perfetto, 355 U.S. 115—examination of evidence to determine whether Communist Party membership of a deportee was a "meaningful association" under Sec. 22 of the Internal Security Act of 1950;

Sherman v. United States, 356 U.S. 369—sufficiency of evidence respecting an issue of entrapment, in a narcotics case;

Masciale v. United States, 356 U.S. 386—whether issue of entrapment was properly submitted to the jury;

Payne v. Arkansas, 356 U.S. 560—whether there was a denial of due process in obtaining confession from a negro;

Nowak v. United States, 356 U.S. 660—setting aside denaturalization order against former Communist Party member for want of "clear and convincing evidence";

Miller v. United States, 357 U.S. 301—sufficiency of evidence to sustain search, seizure and arrest in a narcotics case;

Ashdown v. Utah, 357 U.S. 426—reviewing evidence in respect to a confession given by widow, in a murder case after decedent's funeral;

Crooker v. California, 357 U.S. 433—validity of confession given by a college student in a murder case;

Cicenia v. Lagay, 357 U.S. 504—also involving confession and a plea of duress;

Irwin v. Dowd, No. 63 Oct. Term 1958, May 4, 1959 (CCH p. 1125)—review of evidence in a habeas corpus proceeding to determine due process issue in a State prosecution.

Summary Relief on Certiorari.

This Court has the power to issue a writ and grant summary relief thereunder. That procedure has been followed in many cases, including the following:

Kitchens v. United States, Misc. No. 31, Oct. Term 1958;

United States, ex rel. Farnsworth v. Murphy, No. 82, Oct. Term 1958;

Sagamon Valley Television Corp. v. United States, No. 235, Oct. Term 1958;

WIRL Television Corp. v. United States, No. 242, Oct. Term 1958;

New Orleans City Park Improvement Assn. v. Detiege, No. 295, Oct. Term 1958;

WORZ, Inc. v. Federal Communications Comm., No. 349, Oct. Term 1958;

County of Allegheny v. Frank Mashuda Co., No. 347, Oct. Term 1958;

United States v. Halley, No. 300, Oct. Term 1958;

Smith v. United States, Misc. No. 192, Oct. Term 1958;

Townsend v. Sain, Misc. No. 552, Oct. Term 1958;

Handford v. United States, No. 578, Oct. Term 1958;

Grocery Drivers Union Local No. 848 v. Seven-Up Bottling Company of Los Angeles, No. 169, Oct. Term 1958;

Dyer v. SEC, No. 67, Oct. Term 1958;

DeVries v. Baumgartner's Electric Construction Co., No. 551, Oct. Term 1958;

Ohio, ex rel. Klapps v. Dayton Power & Light Co., No. 851, Oct. Term 1958.

The record is clear. It discloses reversible error on Federal grounds; that a decree should be entered instructing the Superior Court of San Francisco County to grant the Amended Petition for Preliminary Distribution and Determination of Heirship (Rec. Item No. 2, page 81) as prayed. Petitioners apply for summary relief, to that effect pursuant to the certiorari power of this Court.

Denial of Due Process on Appeal.

The due process clause applies to the proceedings of the appellate courts. Constitutional protection does not end at the trial court level (*Shelton v. Kramer*, 334 U.S. 1). The following cases are based on this interpretation of the Fourteenth Amendment:

Blackburn v. Alabama, 354 U.S. 393; remand and order requiring the appellate court to exercise jurisdiction in respect to stated issues;

Chessman v. Teets, 354 U.S. 156; false transcript on appeal;

Griffin v. Illinois, 351 U.S. 12; duty to provide an

appeal transcript without cost, to an indigent defendant in a criminal case.

It is true that there is no constitutional right to an appeal. Finality may be given to the judgments of trial courts. However, when the State does provide for appellate review, all litigants are entitled to equal access to that remedy, and to the benefit of due process in the Appellate Court designated by the State. Equal protection requires that the review in all cases be in accordance with constitutional standards.

The Motion for Disqualification.

Respondent seeks to prejudice this Court against Petitioners by a reference to the motion to disqualify, filed by Petitioner Aaron M. Sargent, in respect to Associate Justice Dooling. The action in question was taken in good faith. Subsequent events indicate a reasonable basis for the motion, regardless of the outcome.

This Associate Justice sat as one member of a panel of three, declining to vote either in favor of or against the opinion and judgment of the District Court of Appeal. He declined to participate in the action of that Court on Petition for Rehearing, and by his inaction, Petitioners were deprived of the benefit of a full consideration by *three* Appellate Court Justices. An effective dissent by one member of a completely independent panel could well have prevented the sequence of events we now have. The situation is quite similar to what would exist if a jury, entitled to render a verdict by two-thirds vote, included one or more persons under disqualification.

It is true that Article VI, Section 4a, of the State Constitution, provides that two Justices shall constitute a quorum, and permits entry of a judgment on the concur-

rence of that number. However, when three Justices convene and actually function as a Court, due process requires the active participation of all of them—by either concurring in, or dissenting from, the action taken. Inaction or abdication of duty by any member of the panel is a denial of due process and the equal protection of law contemplated by the Constitution of the United States. Petitioners were deprived of the benefit of this safeguard.

The ground of disqualification relied on here was bias, prejudice and hostility necessarily resulting from a controversy involving the Associate Justice and Petitioner Aaron M. Sargent. This Petitioner is an attorney who has been active for many years in anti-communist work.[24] He was present at a public meeting where the Associate Justice presided. He entered his objection to statements there made by the attorney for the Communist Party of California—a person invited to be guest speaker. The said Petitioner was a member of the organization sponsoring the meeting. The remarks he made were in his legal capacity as a member. He sought to prevent abuse of the facilities of the organization for propaganda purposes. His exercise of the right to freedom of speech was directly concerned with such membership. The organization was the Commonwealth Club of California.

The guest speaker, an accredited representative of Communists, was then under a sentence of imprisonment for criminal contempt committed during the trial of the leaders of the Communist Party of the United States, before Dis-

24. The Notice and Statement Respecting Disqualification, and supporting documents, Rec. Item No. 7, confirms the status of Petitioner Sargent as an active anti-Communist lawyer. See also Sargent testimony before House of Representatives Special Committee to Investigate Tax Exempt Foundations, H. Res. 217 (the Reece Committee), Hearings, Part 1, pp. 189-409 (83d Cong., 2nd Ses.); a publication within the scope of judicial notice.

trict Judge Medina, in the case of *United States v. Dennis, et al.*[25]

The conduct of the Associate Justice was necessarily involved in the action taken at this meeting, and subsequently (See Rec. Items 7, 8, 11, 12). The motion was presented in good faith. In view of this Court's decision in *Offutt v. United States*, 348 U.S. 11, it should have been granted.[26]

The factual situation is quite similar to that now existing in respect to the proposed visit and the hospitality to be extended to Nikita Khrushchev, as official representative of the Soviet Union. The hostilities that arise under these conditions show bias and prejudice as a matter of law.

Equal Protection on Certiorari.

The question arises: What are the rights of non-communists and anti-communists? Do they have the same rights as the petitioners in *Schware v. Board of Bar Examiners*, 343 U.S. 232 and *Konigsberg v. State Bar*, 353 U.S. 252? From the realistic, as well as the legal, standpoint are the rights of persons without revolutionary, radical or other Left-Wing affiliation equally well secured?

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25. The meeting was one of the Commonwealth Club of California where Richard Gladstein, not a Club member, was invited to appear as guest speaker, taking this opportunity to denounce the Un-American Activities Committee of the State Legislature; using Club facilities for that propaganda purpose. At that time, Gladstein had been held guilty of criminal contempt for misconduct on the trial of the leaders of the Communist Party of the United States, before District Judge Harold Medina in the case of *United States v. Dennis, et al.*, and the contempt citation was sustained by the Court of Appeals in the Second Circuit. See *United States v. Sacher, et al.*, 182 F.2d 416, 430; also, concurring opinion of Circuit Judge Frank, 182 F.2d 453-454, holding the conduct of Gladstein and associates to be the equivalent of "assaulting a pilot of an aeroplane in flight, or turning out the lights during a surgical operation."

26. *Code Civ. Proc.* Section 170; *Giometti v. Etienne*, 219 Cal. 687, 28 P.2d 913; *Evans v. Superior Court*, 107 Cal. App. 372, 382.

It is sometimes inferred that the *practical* operation of the Fourteenth Amendment is limited to racial and group interests. The following dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21—although a clear departure from the actual text of the Amendment, may or may not have been intended to lead to such an interpretation:

> "The Fourteenth Amendment *declares* 'that *all persons, whether colored or white*, shall stand equal before the laws of the States, and, in regard to the colored race, for whose protection the amendment was primarily designed, that no discrimination shall be made against them by law because of their color.'"

The Amendment contains no such *declaration;* nor does it refer to persons either "colored" or "white." No term requires *racial* equality. This has been the result of judicial interpretation. The Amendment protects *persons* because they are *persons;* not because they belong to some particular race, class, or group.

The only Amendments referring to "'slavery" or "race" are the Thirteenth, concerning "involuntary servitude"; and the Fifteenth, securing the "right to vote." No racial interest is required in any proceeding under the Fourteenth Amendment.

Due process clause under the Fifth Amendment includes equal protection (*Bolling v. Sharpe*, 347 U.S. 497). The rule in *Shelley v. Kraemer*, 334 U.S. 1, applies to the Federal as well as the State judiciary. The exercise of certiorari jurisdiction should be subject to these constitutional requirements and a writ issued, of course, where due process is denied in a lower appellate court.

Additional Questions Presented for Review.

We cite the following and request that they be added to the Statement at pages 4-7 of the Petition:

Eighth: Due process in civil actions. Is there any distinction between the requirements of due process and equal protection in a criminal proceeding and those standards as applied to a civil action—except in cases where the conduct complained of is not the act of the State?

Is the rule in *Thomson v. Butler*, 136 F.2d 644, 647, subject to the qualification that constitutional rights must be enforced with full equality except where action by the State is lacking?

Ninth: Refusal to enforce laws. Is it a denial of due process and equal protection for the judiciary of a State to decline to enforce the established law in a particular case where it is evident that it has been the practice to recognize and enforce that law in other cases of the same type? Is this a constitutional duty where the law in question is prescribed by the Constitution or Statutes of the State, and, for that reason, beyond the control of a judicial body?

Tenth: Judicial power. Do the opinions in *Youngstown Sheet & Tool Co. v. Sawyer*, 343 U.S. 579, *Greene v. McElroy*, No. 180, Oct. Term 1958, CCH p. 1985, and similar cases, establish the proposition that an exercise of legislative power by the judiciary is unconstitutional to the same extent as resort to such power by any other department other than the legislative branch? Does this rule apply to the judiciary of a State as it does to the Federal judiciary?

Additional Reasons for Issuing the Writs.

The wrongful interpretation of decedent's trust has created a situation where Federal estate taxes estimated at more than $165,000.00 may not be recoverable—unless the Federal authorities are at liberty to disregard State court judgments based on a refusal to enforce the State law.

This situation is important from the tax evasion standpoint.

The view often expressed that the Fourteenth Amendment as now interpreted applies only to racial or other special interest groups should be corrected by a re-examination of the dictum in *Shelley v. Kraemer*, 334 U.S. 1, 21, and by a re-definition of the broad scope and purposes of the Amendment.

It is axiomatic that this Court exercises an important influence on State courts at all levels. The abuses here involved must not be permitted to go unchallenged if the integrity of the judicial process is to be maintained.

Status of Petitioners.

The essential facts concerning the status of Petitioners are summarized in Footnote 25, at page 28, of the Petition.

Decedent's trust is wholly void as contrary to the public policy, Constitution, and Statutes of the State. In consequence, Respondent can derive no rights therefrom.

The situation is one where failure of a particular party to act cannot validate the trust, which is incapable of ratification. The consequence of a failure of decedent's first cousin, Edmund More, Jr., to claim property of the estate has been that his share devolves on others.

He was party to an agreement whereby Petitioner Aaron M. Sargent acquired an undivided one-half interest—which agreement was never cancelled. There was a waiver and relinquishment as to the remaining one-half. Although duly notified of all steps in these proceedings, Edmund More, Jr., has entered no appearance, did not participate in the hearing, failed to appeal, and failed to join in the petition for certiorari. The termination of his rights are now res adjudicata. Full details on this point will be found in the following briefs filed in the State Appellate Courts:

Appellants' Opening Brief, pp. 56-60 (Rec. Item 3);
Appellants' Reply Brief, pp. 101-106 (Rec. Item 5).

CONCLUSION

It is respectfully submitted that full relief should be granted pursuant to 28 U.S.C.A. 1257; that writs should issue, as this Court may determine, either to the trial court, the appellate courts, or both.

Dated: San Francisco, California, September 14, 1959.

AARON M. SARGENTS
Attorney for Petitioners

(Appendix Follows)

Appendix

True Legal Interpretation of the Will.

This analysis of decedent's will is made for the purpose of determining whether there has been compliance with, or violation of, the rule of property established by the Bishop of Durham case and given statutory effect by Section 22.2 of the California Civil Code. The rule as there stated is the following:

> "The question is not, whether he (the trustee) may not apply it (the fund) upon purposes strictly charitable, but *whether he is bound so to apply it?*"[1]

Estate of Hinckley, 58 Cal. 457, at 509, confirmed the rule with the following interpretation:

> "Where a bequest is made for charitable purposes and also for purposes of an indefinite character, which are not charitable, the whole bequest will be void."

And this interpretation was confirmed by the State Supreme Court in *Estate of Sutro*, 155 Cal. 727, at p. 734, with the following statement:

> "The fatal objection to the validity of the trust is that it authorizes the funds to be devoted to purposes other than charitable and that it leaves the question whether it is to be devoted to charitable purposes, or to other uses not charitable, *entirely in the discretion of the executors*, or, in case of their default, *in the discretion of the Board of Trustees*."

We are dealing with a perpetual trust. Its validity therefore depends on whether discretionary non-charitable powers have been conferred, either directly by the words of the will, or necessarily implied therefrom.

The Testamentary Plan.

The will consists of eight parts, logically arranged as to subject matter, and appearing in the following sequence:

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1. *Morice v. The Bishop of Durham*, 9 Vesey Jr. Reports, p. 399.

1. Burial instructions;
2. The preamble, containing a statement of trust purposes;
3. A bequest to trustees acting for decedent, for these stated purposes;
4. An implementing clause requiring establishment of a foundation and its maintenance in perpetuity;
5. A grant of express powers for administration of the trust fund provided for maintenance;
6. Precatory terms concerning the trust and indicating decedent's motive in establishing it;
7. Provision for annuities;
8. Appointment of an executor and the naming of an alternate.

The key provisions are:

The implementing clause, which requires the foundation to be established as a separate entity;

The broad statement of trust purposes in the preamble, with implied power to carry them out, free of restrictions; and

The provisions in the annuity clause showing the trust to be not necessarily connected with Stanford and capable of being administered by persons in no way connected with the University.

Separate Identity of Foundation and Trust Fund.

The establishment of decedent's foundation and its subsequent maintenance are covered by the following provision of the will at 4:2-5:[2]

2. All citations in this outline refer to the typewritten copies of the will filed with the Clerk for the convenience of the Justices, said copies being in conformity with the will as it appears at pages 3-9 of the Clerk's and Reporter's Transcripts (Rec. Item 2). Page and line references correspond thereto.

"(a) My said Trustees *shall establish* a *Foundation of World Relations*, for the aforesaid purposes; *and* my said Trustees shall use and apply the net income derived from said trust estate for the *maintenance* of said Foundation."

Use of the conjunctive "*and*" shows that two distinct acts —establishment and maintenance, are both required. The word "establish" means "to found; to institute; to create; to set up in business."[3] It indicates that the entity to be set up must be a thing separate from the trust fund. This establishment of the foundation is an act to be performed after decedent's death.

Power to Incorporate the Foundation.

No instruction is given as to the manner in which this entity is to be "established" aside from clear evidence that it is to be a separate thing. In consequence, there is implied power to employ any available means. Civil Code Section 593, in force at the date of the Will, permitted the formation of a nonprofit corporation, with both charitable and non-charitable purposes.[4] Corporations Code, Sec. 9200, in force at date of death, contained similar provisions.

These are the Code sections under which Respondent incorporated Stanford Research Institute, the affiliate engaged in conducting research for industry on a fee contract basis.

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3. All definitions herein are taken from Webster's International Dictionary—Unabridged.

4. Civ. Code, Sec. 593: "A nonprofit corporation may be formed by any number of persons, not less than three, *for any lawful purposes* such as religious, charitable, social, *educational*, recreational, cemetery, *or for rendering services*, which do not contemplate the distribution of gains, profits or dividends to the members thereof, and for which individuals may lawfully associate themselves * * * The carrying on of *business at a profit* incidental to the main purposes of the corporation and the distribution of assets to members on dissolution shall not be deemed forbidden to nonprofit corporations."

Charter purposes of Foundation. The implementing clause provides:

> "(a) My said Trustees shall establish a Foundation of World Relations, for the *aforesaid purposes;* * * *" (5:2-3).

The purposes mentioned are those set forth in the preamble (3:25-4:19). It must have *all* of the purposes indicated. These constitute the charter purposes for which the Foundation is to be established. The bequest shows that there is a charter purpose for the correction of every condition mentioned.

> "I have therefore long cherished the hope that I might be able to *do something* to help toward the correction of *these conditions*, and to that end I hereby give and bequeath * * * all of my estate and property, both real and personal and wheresoever the same may be situate, *in trust*, for the *foregoing purposes*. * * *" (4:19-26)

Use of the plural form in the words "conditions" and "purposes" requires the interpretation that this is to be a *multiple purpose* Foundation. It cannot be construed as a Foundation for the *sole* purpose of "providing education for newspapermen" (Op. iv; 17-20).

Conditions Mentioned in the Preamble.

1. The failure of persons in opinion molding vocations to exercise their power.

> "I believe that these handicaps (of environment and language) can be largely overcome, if the men and women whose vocation vests in them the *power to mold public opinion*, make a *conscious effort* to that end." (4:3-6.)

2. The lack of an understanding of conditions by persons in these opinion molding employments.

"However, their effort will go for naught, unless based on sound education on their own part, and thorough understanding of the economics of the various countries of the world, as well as their historic, diplomatic and political backgrounds." (4:6-10.)

3. Mass ignorance of the general public in respect to foreign affairs.

"* * * the attitude of our citizens toward anything foreign, rests almost entirely with the press * * *" (4:12-13.)

4. The power of the press.

"The molding of public opinion in the United States, insofar as concerns the attitude of our citizens toward anything foreign, rests almost entirely with the press * * *" (4:11-13.)

5. Ignorance of editors and foreign correspondents.

"Based on past experience, I believe that it is fair to say that there is a woeful lack of any real education on their part * * *"

Express Provisions Covering Management of Property.

Detailed instructions are given in respect to the management, investment and reinvestment of the Trust Fund, and disbursement of the income therefrom:

"*My said Trustees* shall, in their own discretion, determine from time to time the manner in which said net income may be best expended * * *" (5:6-8.)

"* * * they may, if they deem such course wise, postpone the expenditure of any sums for my said trust purposes, until such time as the net income available therefor shall, in their opinion, be adequate * * *" (5:9-12.)

"*My said Trustees*, during the existence of said trust, shall have full power and authority to invest and reinvest said trust property included therein, and any and every part thereof, in such securities, lands, buildings,

real estate mortgages and the like, as they in their sole discretion may deem to the best interests of said trust: * * *" (5:15-20.)

"* * * the power and authority hereby conferred upon *my said Trustees* shall include both power and authority to sell, assign and convey said trust property and any and every part thereof, or to exchange the same for any other property, whether real or personal." (5:21-25.)

"In this behalf there is certain counsel and advice which I offer to *my said Trustees* for whatever it may be worth, concerning the holding and disposition of my assets, viz:

"(1) In all probability, at the time of my death a large portion of my assets will consist of real estate which is productive of little or no income. However, it is my opinion that this real estate will increase in value in a short period of years, and that the likelihood of such enhancement will justify *my said Trustees* in holding such real estate until such time as the same may be sold without sacrifice, even though such course may postpone the effectiveness of said Foundation of World Relations:" (5:25-6:11.)

"If at the time of my death, preferred and/or common stock of Bancroft-Whitney Company is included among my assets, I believe, since I have great confidence in said corporation and the earning capacity of said stock, that *my said Trustees* would do well to hold the same as part of the corpus of said trust." (6:12-17.)

"The suggestions concerning my assets hereinabove set forth, shall not be construed as restrictions on the absolute power and authority of *my said Trustees* with reference thereto, or to the sale or other disposition thereof; for I realize full well that changes in conditions justify changes in policy." (6:19-24.)

Implied Powers of Execution.

In contrast with these elaborate provisions concerning management of *property*, there are *no provisions* indicating

how the charter purposes of the Foundation are to be carried out. In consequence, the Directors of the Foundation will have unrestricted power to do or perform any act or thing likely to correct, or tend to correct, any of the conditions mentioned.

The draftsman of this document was a lawyer—a person conclusively presumed to know the meaning of legal terms. Under State law, technical terms used in a will so prepared must be taken in their technical sense.[5]

It follows that the established rule in respect to implied powers of trustees is the measure of the discretionary power conferred. This rule is expressed in the following authorities:

1. Vol. 1, *Restatement of the Law of Trusts*, Sec. 186, p. 485:

> "* * * the trustee can properly exercise such powers and only such powers as (a) are conferred upon him in specific words by the terms of the trust, or (b) *are necessary or appropriate* to carry out the *purposes* of the *trust* and are *not forbidden by the terms of the trust*."

2. Bogert on "*Trusts and Trustees*", Vol. 2A, Sec. 391, p. 190:

> "Trustees of charitable trusts have such powers as are expressly or impliedly given them by the settlor, or are vested in them by statute."

3. Bogert on "*Trusts and Trustees*", Vol. 3, Part 1, Sec. 551, p. 406:

> "Implied powers are those which are not clearly and directly given by the settlor or a court, but which equity believes the founder of the trust or a court

5. *Probate Code*, Sec. 106; *Estate of Bourn*, 25 Cal. App. 2d 590, 595, 73 P.2d 193, 196; *Estate of Northcutt*, 16 Cal. 2d 683, 688, 107 P.2d 607, 610.

granting express powers intended should exist. They are implied or inferred from the terms and purposes of the trust. If a settlor has directed the trustee to reach a certain end, he must be deemed to have intended that the trustee use the ordinary and natural means for obtaining that result. The court reads such a desire into the trust instrument, not because the court is adding something to the trustee's authority for the sake of bringing about a result which it thinks would be just, but for the reason that chancery believes that the settlor actually wished the trustee to have such power, although he did not in so many words grant the authority."

4, Scott on "*Trusts*", Vol. II (Second Edition), Sec. 186, p. 1370:

"*Extent of the trustee's powers.* A trustee has such powers as are specifically conferred by the terms of the trust and such powers as are necessary or appropriate for the carrying out of the purposes of the trust and not forbidden by the terms of the trust. The expression 'terms of the trust' is here used in the broad sense in which it is used in the Restatement of Trusts and throughout this treatise; it is not intended to express provisions of the trust instrument, but includes whatever may be gathered as to the intention of the settlor from the trust instrument as interpreted in the light of all the circumstances, and any other indication of the intention of the settlor which is admissible in evidence."

This rule as to implied power was part of the law at date of execution of the will and also at date of death; it is therefore one of the terms of the trust, which must be construed in accordance therewith.

Absence of Restrictions on Implied Power.

The sentence at 4:19, et seq., containing the bequest in trust, includes the following broad grant of general authority:

"I have therefore long cherished the hope that I might be able *to do something* to help toward *the correction* of these conditions; and to that end I hereby give and bequeath * * *"

The word "charitable" does not appear in the will.

No clause limits the Trustees to the use of those *activities* and *means* which the law deems charitable.

They are not required to avoid operations conducted for profit.

There is no clause requiring use of educational means, either in whole or in part.

The legal consequence of these omissions is that all activities and means—both charitable and non-charitable; educational and non-educational—are not only authorized, but expressly permitted.

Non-Charitable and Non-Educational Possibilities.

The conditions here mentioned are capable of being corrected in a variety of ways, including the following:

The failure of the opinion molders to exercise their power may be corrected by the Foundation engaging in the business of television or radio broadcasting, with commercial sponsorship, or for the benefit of commercial interests;

The same objective may be realized by acquiring control over a broadcasting outlet and operating it on a business basis.

The lack of understanding of international conditions may be corrected by the commercial production, sale and distribution of educational materials.

A similar result may be achieved by the publication and distribution of a news bulletin to a list of paid subscribers.

The knowledge of editors and foreign correspondents may be increased by the commercial publication, sale and

distribution of educational material specially adapted to their needs.

There is no stated purpose set forth in the preamble requiring that *anything* necessarily be done on the campus of a University, or that Stanford University, as such, be connected therewith.

Absence of a Request to Respondent.

The technical meaning of the term designating the trustees is that the persons appointed function as *trustees of the decedent* and not in any capacity as trustees for the use or benefit of Stanford University or any University Department. Throughout the will, decedent refers to the trustees as "*my* said Trustees"—there being a total of *twelve* such provisions. In the clause at 8:10-17, she refers to the possibility that neither the Trustees nor the University may accept, indicating that a substitute or successor trustee may be required. There is no provision containing any bequest to Respondent, as the governing body of the University. Even if the bequest were in that form, Respondent has the power to engage in non-charitable activity, and has done so on many occasions.

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JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

October Term, 1959

No. 200

In the Matter of the Estate of Jessie M. Pierce,

Deceased.

Agnes M. Sargent, Gertrude M. Sargent, Marjorie Goodwin, Guardian and Lawful of Helen M. Sargent, Jr., Frank M. Howell, Jr., Olive P. Howell, Mary Etta Gass Bundy, Elizabeth Gass Hassell, Louise Evans, Fred Howell, Courtenay Moth Mebane, Frank Moss and Margaret Moss White,

Petitioners,

vs.

The Board of Trustees of the Leland Stanford Junior University,

Respondent.

Petition for a Rehearing in Bank

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In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of JANET M. PECK,

Deceased.

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,

Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,

Respondent.

Petition for a Rehearing in Bank

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Petitioners, and each of them, apply to this Court, and the several Justices thereof, for a Rehearing in Bank, and other relief, on the following grounds:

First: The judgments of the Superior Court and the District Court of Appeal are invalid, being in violation of the Constitution of the United States. Consequently, the due process and equal protection clauses in the Fourteenth Amendment require a reversal.

Second: The Order Denying Certiorari is unconstitutional.

Third: The questions here presented are of such public importance as to require an exercise of jurisdiction on certiorari.

Fourth: Decedent's trust is invalid in permitting an unconstitutional interference with the freedom of speech and press clauses in the First Amendment secured against State infringement by the Fourteenth Amendment.

The power to mold public opinion by advocating appeasement, relinquishment of American sovereignty, and surrender of the government of the United States into the control of a foreign power as a means of preventing war, is another unconstitutional power under the trust and a violation of Title 18 United States Code, Secs. 2381 and 2385.

Under the rule enunciated in *Shelley v. Kraemer*, 334 U.S. 1, the act of the State judiciary in enforcing such a trust is a violation of the Fourteenth Amendment.

Fifth: When the acts and proceedings of this Court are tested by the Rule of *Constitutional Supremacy* laid down in *Marbury v. Madison*, 1 Cranch. 137, it is clear that the Order Denying Certiorari is invalid.[1]

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1. See also opinion of Chief Justice Marshall in *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, at 376, commenting on the interpretation of judicial power urged by the Attorney General of the State of Virginia: "If such be the constitution, *it is the duty of the court to bow with respectful submission to its provisions.* If such be not the constitution, it is equally the duty of this court to say so; and to perform that task which the American people have assigned to the judicial department."

In this Petition, Respondent "The Board of Trustees of The Leland Stanford Junior University" is referred to as "Stanford". Unless otherwise stated, all italics and other emphasis used herein is ours.

OUTLINE OF STATE COURT PROCEEDINGS

The Superior Court.

After a trial, the Court entered a minute order awarding the estate to Stanford. No reasons were given to sustain the order. The will contained no such bequest. The will sought to establish a trust for specified purposes requiring no cooperation or active participation by the University or any of its departments.

This arbitrary award was an act of usurpation and a denial of due process and equal protection in violation of the Fourteenth Amendment.

The District Court of Appeal.

Stanford filed a brief that urged the Court to adopt a false and untruthful interpretation of the will. The name and prestige of the University were used as a "*Cloak of Respectability*" to aid in the perpetration of the fraud. The Court adopted this untruthful presentation and made it the basis of an opinion affirming the judgment.

One of the Justices was challenged for bias. He resisted disqualification; sat during oral argument; and refused to vote either in favor or against the action taken by his associates. The "opinion" was rendered by the other two members of the panel. Petitioners were thus deprived of their property rights in violation of law.

The Court "*invented*" a *special* rule of interpretation for the purposes of *this* case. It refused to apply the statutory rules controlling the interpretation of wills in other cases:

and it declined to enforce, without discrimination, the constitutional provision and statute under which decedent's trust is invalid. Its conduct, in this respect amounted to judicial usurpation and a violation of the rule in *Shelley v. Kraemer*, 334 U.S. 1.

One of the Stanford Trustees is a Justice of the State Supreme Court. In petitioning for a hearing, we noted his disqualification and requested appointment of a Justice pro tem to make a full panel of seven.[2] That request was disregarded. The State Supreme Court denied a hearing without opinion. It became necessary to apply to this Court for relief.

CONSTITUTIONAL SUPREMACY

The judgment under review can only be sustained on the theory of *judicial supremacy*—the existence of some power at the State level authorizing the judiciary to impose its will on litigants in disregard of the State Constitution and Acts of the State Legislature. There is no basis for any concept of judicial supremacy under the Constitution or Laws of the State of California.

Article III, Sec. 1 of the State Constitution provides for a separation of powers and it prohibits each Department from exercising functions pertaining to either of the others. The Judiciary owes its existence to Article VI. It was ordained and established by the State Constitution, which derives its authority from the People; not from the act of any judicial officer.[3] Under Article XX, Sec. 3, all state officials, including members of the judiciary, are bound by

2. Rec. Item No. 17, Petition for Hearing in the Supreme Court, at p. 2.

3. Preamble: "We, the people of the state of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution."

oath to support its provisions.[4] In addition, State judicial officers are required to take the oath prescribed by Article VI of the Constitution of the United States.

It is the Constitution, and not the Judiciary of the State of California, that is *supreme*. The attempt, of the State judiciary, to exercise such supreme power was an act of usurpation.

CONSTITUTIONAL SUPREMACY AT THE FEDERAL LEVEL

The conduct of the State Courts was so flagrant as to deprive Petitioners of the benefit of a fair and adequate review on appeal. Under state law, such review is a matter of right.[5] Under such circumstances, it is the duty of this Court to grant relief.

The Order Denying Certiorari must, in the nature of the case, have as its basis (1) the exercise of an arbitrary power of selection, (2) majority action preventing the minority from issuing a writ, or (3) resort to the Legislative prerogative of denying an application on grounds of public policy or expediency.

If the Federal Constitution provided for *Judicial Supremacy* there might be a basis for argument in support of this dangerous power. However, it does not so provide. Under our Constitutional System it is the *Constitution* and not the Judiciary that is supreme. That fact was recognized at an early date by the opinion of Chief Justice Marshall in *Marbury v. Madison*, 5 U.S. (1 Cranch.) 137, 176-177:

4. "*Oath of Office*. Members of the legislature, and all officers, *executive and judicial* * * * shall, before they enter upon the duties of their respective offices, take and subscribe the following oath or affirmation:

"'I do solemnly swear (or affirm, as the case may be) that I will support the Constitution of the United States and the Constitution of the state of California, and that I will faithfully discharge the duties of the office of ..... according to the best of my ability.'"

5. Probate Code, Sec. 1240.

"If a law be in opposition to the constitution; if both the law and the constitution apply to a particular case, so that the court must decide that case, conformable to the law, disregarding the constitution; or conformable to the constitution, disregarding the law; the court must determine which of these conflicting rules governs. * * *

"Those, then, who controvert the principle, that the constitution is to be considered, in court, as a paramount law, are reduced to the necessity of maintaining that courts must close their eyes on the constitution * * *. This doctrine would subvert the very foundation of all written constitutions."

The Constitution derives its authority directly from the People, who acted in State Conventions held to debate the issue of ratification.[6] This Court owes its existence to, and it derives its power from that Constitution.

The Constitutional oath prescribed by Article VI is more than a technicality or formality. It was intended to impose a solemn obligation, binding equally on executive, legislative, and judicial officers, both State and Federal. It is part of the Article containing the supremacy clause.[7] That oath

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6. *McCulloch v. Maryland*, 4 U.S. (4 Wheat.) 420: "The People acted on the Constitution 'in the only manner in which they can act safely, effectively, and wisely, on such a subject, by assembling in convention * * *. When they act, they act in their States. But the measures they adopt do not, on that account, cease to be the measures of the people themselves, or become the measure of the State governments. From these conventions the Constitution derives its whole authority. The government proceeds directly from the people; is ordained and established in the name of the people; and is declared to be ordained, in order to form a more perfect union, establish justice, insure domestic tranquility, and secure the blessings of liberty to themselves and to their posterity.'"

7. Article VI: "The Senators and Representatives before mentioned, and the Members of the several State Legislatures, and all executive and judicial Officers, both of the United States and of the several States, *shall be bound* by Oath or Affirmation, to support this Constitution; * * *"

was prescribed by men familiar with disloyalty and treason; men who remembered the treasonable activities of Benedict Arnold!

It follows from the supremacy clause, and this oath provision, that there is no power in the Congress to confer on this Court a power whereby the rights of some litigants may be sacrificed on the ground of expediency, while relief is given, in similar circumstances, to others.

CERTIORARI POWER OF INDIVIDUAL JUSTICES

It is the duty of each Justice to be bound by the Constitution and to act in accordance with his oath. There is no power in any other Justice to interfere with the discharge of this responsibility. It follows that the majority has no power to prevent issuance of a writ, when the Clerk is given a contrary instruction by the minority.

POLITICAL AND LEGISLATIVE POWER

The powers of a legislative body include the right to act or refuse to act in a given situation; to grant or deny relief on public policy grounds, or for reasons of expediency. Political questions are determined by the Congress or the Executive. The judicial power does not extend to matters that are political or legislative in character.[8] The writ of certiorari may not lawfully be granted or withheld on those grounds. Section 1257 of Title 28 United States Code confers no legislative or political power.

8. *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 403: "It is most true, that this court will not take jurisdiction if it should not: but it is equally true, that it *must* take jurisdiction, if it should. The judiciary cannot, as the legislature may, avoid a measure, because it approaches the confines of the constitution. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it, if it be brought before us."

THE IMPERATIVE NEED OF INTEGRITY IN THE JUDICIAL PROCESS

The oath provision and the supremacy clause in Article VI apply to all public officials at all levels. Each has a duty, power and responsibility concurrent with and equal to that of all the others.

Judges of lower courts have the right and the duty to disregard unconstitutional orders and mandates.[9]

State Legislatures have the power, under the Tenth Amendment, to enact laws protecting their citizens from acts of usurpation.[10]

In his Farewell Address, our first President warned his countrymen of the dangers inherent in all acts of usurpation.

In the last analysis the authority of the Judiciary depends on public acceptance of its opinions; on its reputation for truth, fairness and integrity. Judgments based on falsehood cannot be tolerated if we are to maintain the integrity and the high standards in the administration of justice that must be observed in this time of national crisis.

PUBLIC IMPORTANCE OF THESE QUESTIONS

There are no questions of greater importance at this time than those concerning the relationship of this Court to the Constitution; Constitutional Supremacy; Sanctity and legal effect of the Constitutional Oath; and the defenses against usurpation established by the Constitution of the United States. Recent events have exposed some of the Constitutional dangers confronting us.

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9. "In questions of power, then, let no more be heard of confidence in man, but bind him down from mischief by the chains of the Constitution".—"Kentucky Resolutions" drafted by Thomas Jefferson for adoption by the Kentucky Legislature.

10. See remarks of Congressman Alford and editorials from the Pioche Record, of Pioche, Nevada, House Proceedings of Sept. 5, 1959; Cong. Rec. pp. 16712-16723.

Economic Dictatorship. On August 5, 1956, the Indianapolis Star carried a news dispatch on the *Industrial College of the Armed Forces* quoting from the secret address delivered by Dr. Charles Fairman, Professor of Law at Harvard. This article, headlined "*Armed Forces Lecture Bares Blueprint for U. S. Dictatorship*", reported on the incident as follows:

> "Fairman advised his listeners not to worry about constitutional objections and advocated legislation which would put all civilian and military activities under the control of a federal super-government in the event of a devastating atomic attack * * *.
>
> "Fairman said new legislation should 'stake out the lines by which that central leadership would be exercised.' The national government must act 'upon and through' the state governments, rather than through its own branches.
>
> "'The national government must be geared directly to the states so that leadership at the top will be transmitted to and through the state and local administrative machinery.' * * *
>
> "'This is almost wholly without precedent. * * * Don't worry about constitutional objections. I assure you that the Constitution, rightly understood, will sustain all that needs to be done * * * Our problem is operational, not Constitutional.'"

An editorial, "The Way to Dictatorship", in the August 7, 1956, issue of the same newspaper made the following comment:

> "'They that can give up essential liberty to obtain a little temporary safety deserve neither liberty nor safety,' said Benjamin Franklin.
>
> "A story in The Sunday Star about a formerly secret proposal for a super Federal government to be imposed for 'civil defense' purposes reflects just such a demand. It proposes that Americans surrender their traditional

liberties under the guise of providing them safety in time of crisis.

"This proposal was made by a Dr. Charles Fairman, Professor of Law at Harvard, in a speech to the Industrial College of the Armed Forces. It was a serious proposal to substitute Federal authority for the authority of all state governments in matters concerning civil defense * * *

"What Dr. Fairman proposes is the abolition of the American constitutional form of government under the guise of preparing for an emergency. He proposes that the authority of the states be completely surrendered to the Federal government. Using the excuse of the threat of 'nuclear war' as a pretext, he would simply take away by Federal statute the police powers guaranteed to the states by Article 10 of the Constitution. Federal gauleiters would be set up in military districts with the power to overrule the acts of state governors. Their 'signature would be in lieu of his' when acting 'in respect of all things essential to the Federal government's war effort.'"

Presumably, the Commander in Chief powers of the President would be used to put such a plan into operation. Courses in "Education", now being conducted by the Department of Defense, are designed to train civilians needed for key positions in this sort of military dictatorship.[11]

Future Depressions. The operation of such a dictatorial plan is by no means confined to the *military* situation that might exist in the event of a nuclear attack. An economic crisis brought on by foreign demands on our gold supply could cause a depression that might be used as a pretext

11. Instructional material currently in use by the Industrial College of the Armed Forces includes a correspondence course for "Selected Civilians for Important Managerial Positions", dealing with subjects such as Human Resources; Natural Resources; Electric Power, Gas and Telecommunications; United States Economic Foreign Policy; Foreign Aid; and Economic Stabilization.

for the exercise of these unconstitutional powers. One of the most serious aspects of the present situation is the fact that there are so-called "respectable" people more interested in their own investments, power, and influence, than in the security of the United States—men willing to do almost anything for money, power, or influence. Some of the bankers and industrialists greeting and conferring honors on Nikita Khrushchev may be in this category.[12] It has been recognized for some time that so-called "respectable" people constitute the most dangerous type of risk to national security.

The Surrender Plan. On August 14, 1958, the Honorable Richard Russell, Senator from the State of Georgia, made the following statement on the floor of the United States Senate:

> "The honor of the present generation and the fate of generations yet unborn demand that we use the great heritage of our matchless resources in preparing to destroy anyone who would attack us, instead of cowardly counting the cost and developing plans for surrender."[13]

The Senator referred to a study initiated by the Department of Defense having for its apparent object a possible surrender by the Government of the United States. He

12. See New York Herald Tribune, issue of September 18, 1959, page 10, containing guest list for reception given by former New York Governor Averell Harriman; and guest list at luncheon arranged by Mrs. Robert F. Wagner at the Waldorf-Astoria Hotel, New York City. See also New York Times, issue of September 25, 1959, containing list of guests at the dinner given at Washington, D. C., by Eric Ridder, publisher of The Journal of Commerce. Compare House Un-American Activities Committee Document "The Crimes of Khrushchev", Part II, Consultations with Drs. Lev E. Dobrianski, et al (Sept. 9-11, 1959), exposing the Genocide and other crimes of the man honored by these "notables."

13. Vol. 104, Cong. Rec. Part 14, Senate Proceedings of Aug. 14, 1958, p. 17516.

referred, in particular, to a book, "Strategic Surrender", by Paul Kecskemeti, published in 1958 by Stanford University Press. The printing and distribution of that book is another one of the commercial, non-charitable operations of Respondent. Other reference material respecting this incident is cited in the footnote.[14]

The Kecskemeti book, published by Stanford, discusses problems involved in the surrenders of France, Nazi Germany, and Japan. Our country has no war plans contemplating invasion of any foreign nation. Evidently the researchers had in mind a program for delivery of control of our own government into the hands of a foreign power.

The Federal Constitution provides for a defense, in depth, against the dangers of usurpation, abdication, and surrender. There is no legal place in our constitutional scheme of things for Benedict Arnolds or others tempted to bargain away *our* rights for the sake of *their own* personal or financial security.

We submit that the time has come for this Court to define its own jurisdiction and relationship to the Constitution of the United States.

INTERFERENCE WITH FREEDOM OF THE PRESS

Decedent's will requires establishement of a Foundation with power to mold public opinion as a means of preventing

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14. The studies referred to were conducted by Dr. Ellis A. Johnson, Director of the Operations Research Office of Johns Hopkins University—a nonprofit scientific organization operated for the Army; and Rand Corporation, a nonprofit scientific agency operated for the Air Force by a group of universities. See Vol. 104, Cong. Rec. Part 14—Senate Proceedings of August 14, 1958, pp. 17510-17511, involving insertion, by Senator Symington, of article from Aug. 14, 1958, issue of New York Mirror; Vol. 104, Part 13, Senate Proceedings of Aug. 8, 1958, at p. 16668, where Senator Symington inserted article from St. Louis Post Dispatch, by Gen. Thomas Phillips, Military Analyst; and discussion at Vol. 104, Part 14, pp. 17517-17526, inclusive.

war. There is authority to make a conscious effort to control public opinion and media of communication in achieving that end; power to disseminate propaganda and otherwise undermine the freedom and integrity of the press. These broad powers are capable of infringing rights secured by the First and Fourteenth Amendments, and are therefore unconstitutional. We submit that decedent's trust should be held invalid on this ground.

POWER TO ADVOCATE APPEASEMENT AND SURRENDER

The trust powers are so broad that decedent's Foundation could, without violating the will, advocate and support disloyalty and even treason, according to the plan suggested by the surrender program exposed on the floor of the United States Senate. Such powers are surely in violation of Title 18, United States Code, Sections 2381 and 2385, and the treason clause (Article III, Sec. 3) of the Federal Constitution, and should be so declared.

Wherefore, Petitioners pray that this Court, and the several Justices thereof, grant the following relief:

First: A rehearing in bank and entry of an order granting certiorari;

Second: Entry on the record of the action taken by individual Justices in respect to this Petition, and the relief sought thereunder;

Third: Oral argument on the within Petition, directed to the public importance of the questions presented and the need for granting certiorari in reference thereto.

Dated: November 4, 1959.

Respectfully submitted,

AARON M. SARGENT
Attorney for Petitioners

Certificate of Counsel

Pursuant to Rule 58, I hereby certify that the foregoing Petition for a Rehearing in Bank is presented in good faith and not for delay; I further certify that said Petition is restricted to the grounds set forth in subdivision 2 of said Rule 58, to-wit: To intervening circumstances of substantial or controlling effect, and to other substantial grounds available to Petitioners, although not previously presented.

Dated: November 4, 1959.

AARON M. SARGENT
Attorney for Petitioners

Appendix Follows

Appendix

ARTICLE VI

"*This Constitution*, and the *Laws of the United States* which shall be made in Pursuance thereof; * * * shall be the *supreme Law of the Land*; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.

"The Senators and Representatives, before mentioned, and the Members of the several State Legislatures, and *all* executive *and judicial Officers, both of the United States* and of the several States, *shall be bound by Oath* or Affirmation, *to support* this *Constitution*; * * *"

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28 USCA SEC. 453

"Each justice or judge of the United States shall take the following oath or affirmation before performing the duties of his office: 'I, ... do solemnly swear (or affirm) that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will faithfully and impartially discharge and perform all the duties incumbent upon me as ..... according to the best of my abilities and understanding, agreeably to the Constitution and laws of the United States.'"

SUPREME COURT RULE 5(4)

"Upon being admitted, each applicant shall take and subscribe the following oath or affirmation, viz:

"'I, ..., do solemnly swear (or affirm) that I will demean myself, as an attorney and counsellor of this court, uprightly, and according to law; and that I will support the Constitution of the United States.'"

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JAMES R. BROWNING, Clerk

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 200

In the Matter of the Estate of JANET M. PECK,

Deceased.

AARON M. SARGENT, CORNELIA M. SARGENT, MADELYN GEORGIAN, Guardian ad Litem of HELEN M. SARGENT, JR., FRANK M. HOWELL, JR., ORRIN P. HOWELL, MARIETTA GANN BUNDY, ELIZABETH GANN HANDEL, LOUISE FLINN, FRED HOWELL, CHARLOTTE MORE MELONEY, FRANK MORE and MARGARET MORE WHITE,

Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,

Respondent.

Motion for Order Granting Hearing, With Oral Argument, on Petition for Rehearing in Bank

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Petitioners,

vs.

THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY,

Respondent.

Motion for Order Granting Hearing, With Oral Argument, on Petition for Rehearing in Bank

To the Honorable Earl Warren, Chief Justice, and to the Honorable Associate Justices of the Supreme Court of the United States:

Pursuant to Rule 35, Petitioners move and apply to this Court and the several Justices thereof, for an order granting the following relief:

First: A hearing with oral argument on the Petition for a Rehearing in Bank, filed herewith;

Second: Oral argument addressed to the public importance of the following questions raised herein:

(a) Significance of the Rule of Constitutional Supremacy established by Article VI of the Federal Constitution and the decisions of this Court in *Marbury v. Madison*, 1 Cranch. 137, and *McCulloch v. Maryland*, 4 Wheat. 316;

(b) Duties and responsibilities imposed on the several Justices in their individual capacity by the oath prescribed in said Article VI;

(c) Power in the several Justices to require issuance of a writ in the absence of a majority vote;

(d) Importance of the questions stated in the Certiorari Petition and in paragraphs 8, 9 and 10, at page 30, of Petitioner's Reply Brief.

(e) Duty to grant certiorari, as of right, in a case where there has been a failure to provide a fair and adequate review in the appellate courts of a state.

Third: Entry of orders recording the action of the several Justices on this motion and on the Petition for a Rehearing in Bank, filed herewith;

Fourth: Oral argument on this motion, pursuant to subdivision 3 of Rule 35.

FACTS RELIED ON IN SUPPORT OF MOTION

This motion is based on the record, the Petition for Writs of Certiorari, Petitioners' Reply Brief, and the Petition for Rehearing in Bank filed herewith.

AUTHORITIES IN SUPPORT OF MOTION

The supremacy clause and oath provision in Article VI of the United States Constitution.

28 U.S.C.A. 1257, sub. 3, conferring jurisdiction on certiorari.

Cohens v. Virginia, 19 U.S. (6 Wheat.) 264, distinguishing between the constitutional mandate to exercise judicial power, and the discretionary prerogatives possessed by a legislative body.

Smith v. Vulcan Iron Works, 165 U.S. 518; *Boynton v. Hutchinson Gas*, No. 655 Oct. Term 1933 (Supreme Court Journal Jan. 22, 1934, p. 137), 291 U.S. 656.

"Jurisdiction of the Supreme Court of the United States," by Robertson and Kirkham, Sec. 286, p. 543.

It is submitted that in view of the public importance of the questions here presented, oral argument should be allowed, and a full and complete record established.

Dated: November 4, 1959.

Respectfully submitted,

AARON M. SARGENT

Attorney for Petitioners